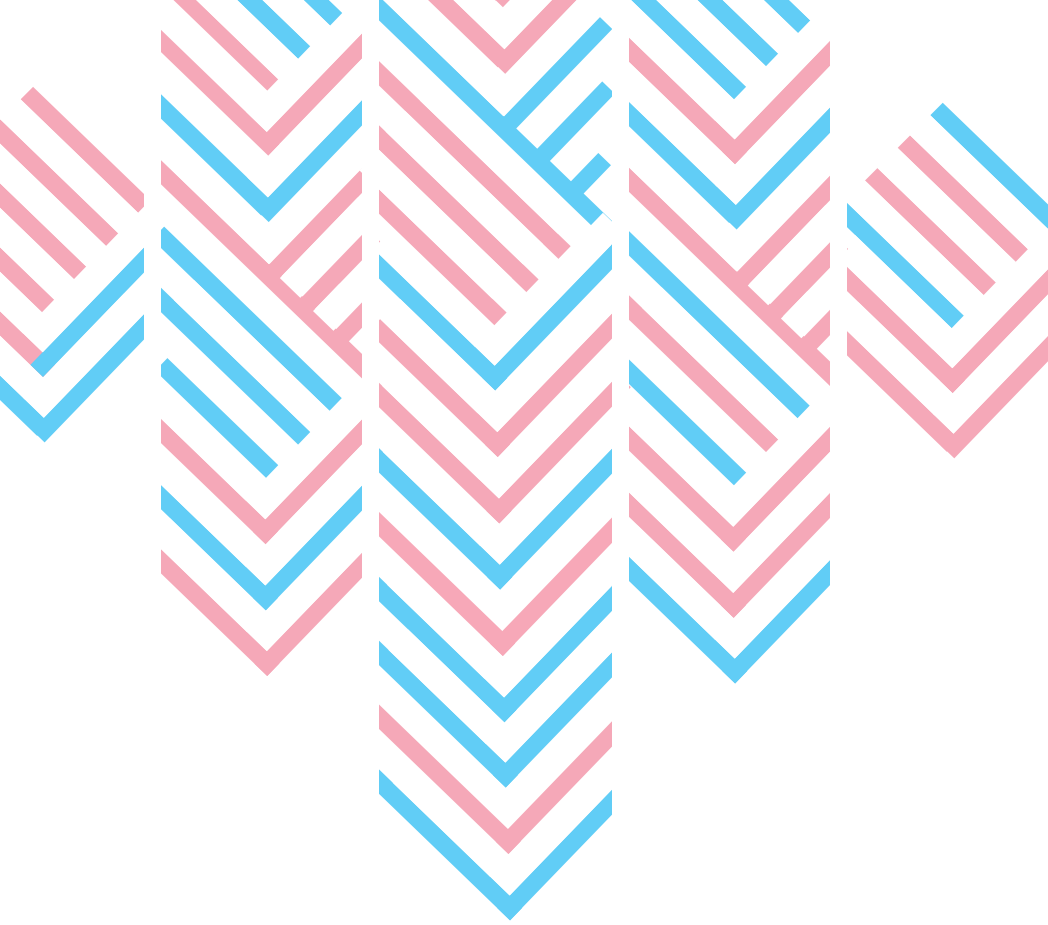




Best Practice Guide

CEDAW as a Tool to Protect the Rights of Trans Women



Kaleidoscope

Human Rights Foundation

Kaleidoscope Human Rights Foundation

in collaboration with King & Wood Mallesons

KING & WOOD
MALLESONS
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About Kaleidoscope Human Rights Foundation

Kaleidoscope Human Rights Foundation ('[Kaleidoscope](https://www.kaleidoscopehrf.org/)') is a not-for-profit organisation committed to promoting and protecting the human rights of lesbian, gay, bisexual, transgender, intersex and queer people in the Asia Pacific region. We work directly with local activists to enhance their capacity to combat prejudice, hostile authorities and discriminatory laws, helping them achieve the freedom and equality essential to living a life of dignity.

More information about Kaleidoscope can be found on our website:

<https://www.kaleidoscopehrf.org/>

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Foreword

In recent years we have seen an alarming increase in incidents of anti-trans violence. Improvements in the acceptance and recognition of transgender individuals in some countries have been met with backlash and regression in others, that lead to escalations in prejudice, vilification, discrimination and violence specifically targeting this community.

CEDAW has the potential to be an effective mechanism for advancing the rights of trans women and recognising the intersectional forms of discrimination they experience.

Transgender people are **four times** more likely to experience violence and abuse than their cisgender peers,² and transgender women (referred to in this Guide as '**trans women**') are more likely to experience sexual harassment and assaults in public places.³ Globally, there has been a steady increase in the number of reported murders of transgender and gender diverse persons, with at least **4,690 murders documented since 2008**, of which **97% of the victims were trans women**.⁴ Many instances of violence directed at trans women go unreported, or if reported, are not adequately investigated by local authorities.

Despite this evidence, United Nations ('**UN**') human rights bodies have often failed to consistently address targeted discrimination and violence against trans women. Since the establishment of the UN, international law has developed to protect women's rights, but in doing so, it has inadvertently established a gender binary, that often addresses inequality and discrimination on the basis of 'sex', such that gender identity, sexuality and bodily diversity have been neglected. In recent years, we have seen this starting to change. For example, the Committee on the Elimination of Discrimination Against Women ('**CEDAW Committee**') has noted that CEDAW should be interpreted and applied to include 'gender-based' discrimination, but it has yet to express how this translates into tangible State obligations or protections in a transgender-specific context.

Nevertheless, the Committee has made it clear that 'women', as that term is used in CEDAW, includes trans women, and accordingly, all the rights and protections in CEDAW extend to trans women. Trans women and their advocates are empowered by this treaty to call out violations of their rights by countries which have ratified the treaty.

This Guide is intended to be a practical tool for trans women, allies, human rights lawyers and NGOs to leverage CEDAW to better protect the rights of trans women. This Guide is also intended to assist policy makers to understand how CEDAW protects the rights of trans women and the obligations on governments to implement CEDAW to protect these rights.

Professor Paula Gerber

Chair, Kaleidoscope Human Rights Foundation

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Introduction

Pronouns and Trans Women

This Guide uses 'she' and 'her' pronouns in reference to trans women. The analysis in sub-section 1.2 of this Guide demonstrates that references to 'women' in the context of CEDAW include trans women. Accordingly, where the word 'woman' or 'women' is used in this Guide, it is intended to include 'trans woman' and 'trans women' respectively.

This Guide comprises the following three sections:

Section 1 Significance of CEDAW for trans women

This section analyses the significance of CEDAW to trans women, explaining the work of the CEDAW Committee, as well as outlining the core principles underpinning CEDAW and how this treaty is interpreted and enforced in relation to trans women.

Section 2 CEDAW and trans women

This section provides a comprehensive overview of the key rights in CEDAW and how each has been (or could be) interpreted in contexts relevant to trans women.

Section 3 How trans women can use CEDAW to protect their rights

This section explains how trans women can engage with the CEDAW Committee and the specific procedures they can use in order to access the protections that CEDAW affords.

This Guide begins with a glossary of essential terms and concludes with a practical checklist of things to be considered ahead of using the treaty mechanisms.

The information presented in the Guide is derived from an extensive review of the CEDAW Committee's decisions and commentary, including:

- General Recommendations (all 39 to date);
- Inquiry Procedure reports (all 7 to date);
- Concluding Observations which reference trans women (between 2013 and 2024); and
- individual communications in relation to trans women (between 2013 and 2024).

The review was supplemented by relevant academic literature and supporting publications.

Although this Guide is limited to providing guidance and insight into CEDAW in the context of trans women's rights, it may provide a useful foundation for future exploration of how CEDAW can be used to advance the rights of other individuals. For example, the Committee has demonstrated repeatedly, and in plain language, that CEDAW protects the rights of intersex⁵ women, and so further guidance on how intersex women can use CEDAW to address their unique experiences of discrimination and disadvantage would be worthwhile.

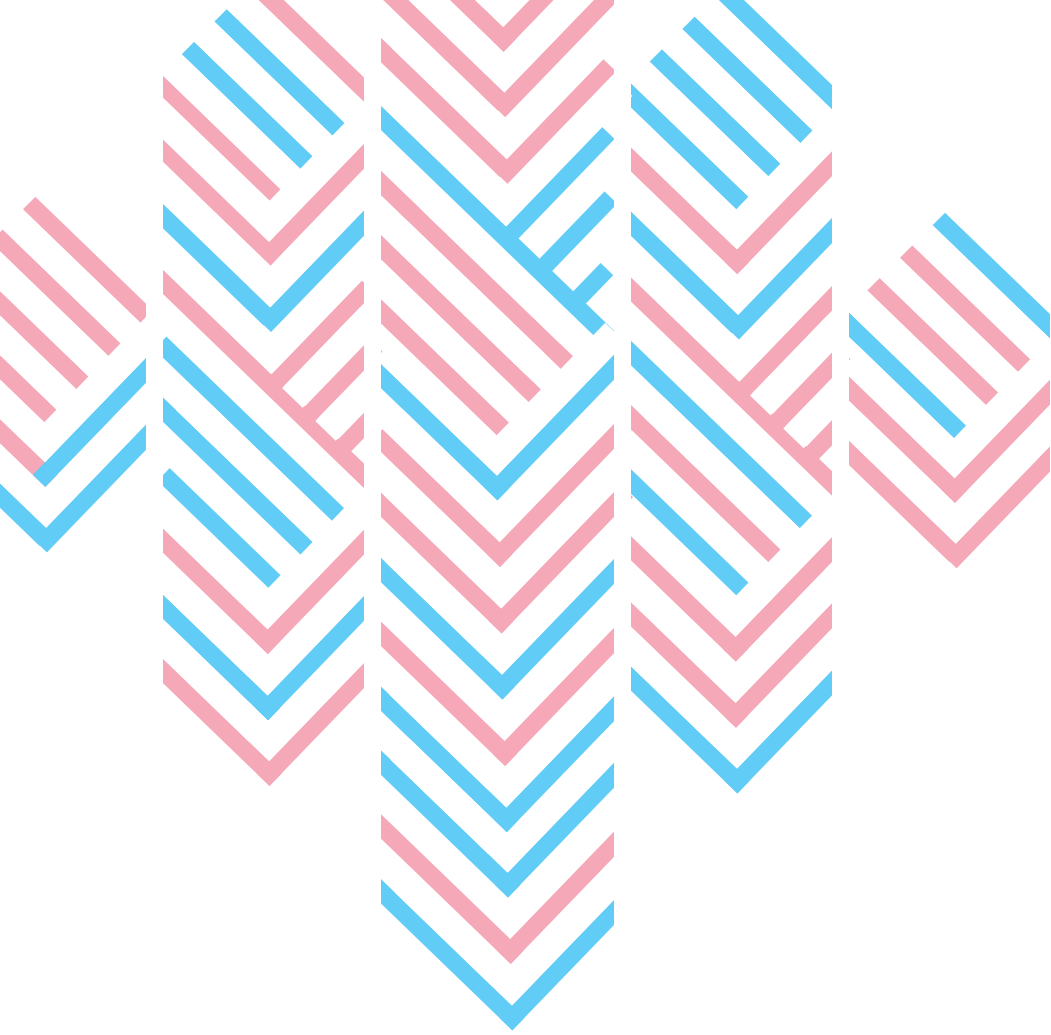
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Key terms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women. This treaty was adopted by the United Nations General Assembly on 18 December 1979 and entered into force in September 1981 (after 20 countries had signed onto it). There are now 189 countries that have agreed to protect women's rights in accordance with this treaty.
Cisgender	A person whose gender identity corresponds with the sex assigned to them at birth.
Gender identity	A person's innate and deeply felt sense of being male, female or another gender, such as non-binary, third gender, genderqueer, etc. Gender identity may or may not correspond to a person's sex assigned at birth (i.e. the sex recorded on a person's birth certificate). See also 'transgender' and 'cisgender'. The concept of gender identity includes a person's gender expression, although gender expression does not always neatly align with a person's gender identity.
OP-CEDAW	The Optional Protocol to CEDAW. The OP-CEDAW allows individuals or groups of individuals to bring a complaint about an alleged violation of their rights to the CEDAW Committee.
Optional Protocol	A treaty that complements and/or supplements a human rights treaty (' Main Treaty ') by providing for a procedure to give effect to the Main Treaty's operation and enforcement, or to further address a substantive area of the Main Treaty.
Periodic reports	The reports submitted by State Parties to the CEDAW Committee at least every four years detailing how they are implementing the treaty.
Ratify	When a country ratifies a treaty, it agrees to be legally bound by it.
Reservations	A type of 'opt-out' clause that countries can make to indicate specific aspects of the treaty to which they do not agree to be bound.
States / State Parties	Countries that ratify a treaty are formally known as 'State Parties'.
Temporary special measures	Policies or actions designed to accelerate the improvement of the position of women to achieve equality with men and to address the social, cultural, and structural changes needed to correct past and existing discrimination (sometimes referred to as 'affirmative action').
Transgender	A person who identifies with a different sex than the one assigned to them at birth (often abbreviated to ' trans '). ⁶



Section 1

Significance of CEDAW
for trans women



1.1 CEDAW at a glance

Rights and freedoms protected by CEDAW

Freedom from prejudices, discriminatory customs and other practices, and gender stereotyping	Art 5.
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Freedom from trafficking and exploitation of prostitution	Art. 6
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Right to equality in political and public life	Arts. 7-8
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Right to equality regarding nationality	Art. 9
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Right to equality in education	Art. 10
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Right to equality in employment	Art. 11
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Right to equality in health care	Art. 12
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Right to equality in economic life, sport and culture	Art. 13
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Rights of equality for women living in rural and remote areas	Art. 14
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Right to equality before the law	Art. 15
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Right to equality in marriage and family relations	Art. 16
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189 countries have agreed to be bound by CEDAW, second only to the Convention on the Rights of the Child which 196 countries have ratified. This means that CEDAW is available to protect trans women in the vast majority of countries; the United States of America ('USA') being a notable exception.

When countries ratify or accede to CEDAW, they commit to implementing it domestically, i.e. within their borders.

With its foundation in equality and non-discrimination, CEDAW spans all facets of women's lives. It aims to dismantle barriers to equality, emphasises the need for favourable conditions for women's progress and seeks to protect not only civil and political rights (such as the right to vote and to free speech), but also economic, social and cultural rights (such as the rights to housing, health and education).

Some of the key human rights enshrined in CEDAW are shown in the diagram to the left.

Structure/approach of CEDAW

CEDAW enshrines a definition of 'discrimination against women' and outlines the actions that State Parties must take to bring it to an end. CEDAW is broadly structured as follows:

- Article 1:** Defines 'discrimination against women' as either direct and intentional, or indirect and unintentional. It emphasises the link between social constructions of gender and women's real experiences of discrimination across all aspects of life.
- Articles 2-4:** Set out the obligations of State Parties to implement legal and policy measures to eliminate discrimination. These include the use of temporary special measures and other forms of affirmative action.
- Article 5:** Recognises the root-cause of discrimination, being the adverse impact of social, customary, and cultural practices based on ideas of 'inferiority or superiority' related to sex or stereotypical gender roles, including how they intersect with factors such as ethnicity, social descent, Indigenous status and disability. This is a radical provision, and of particular importance to trans women, because it broadens the scope of what may constitute gender discrimination and requires consideration of a range of factors that, alongside sex, create interlocking systems of oppression.



The CEDAW Committee is made up of 23 members, who are independent experts in the field of women's rights from around the world and have been elected for four-year terms by countries that have ratified CEDAW.

4. **Articles 6-16:** Specify the different areas in which discrimination must be eliminated through specific measures that align with the general obligations described in Articles 2-4. For example, if women are to have equal rights in education (Article 10), State Parties should implement laws and policies to increase women's access to scholarships, vocational training and sport.
5. **Articles 17-22:** Establish the CEDAW Committee and set out its functions.
6. **Articles 23-30:** Address administrative and other procedural aspects relating to CEDAW, e.g. when the treaty enters into force.

Who monitors compliance with CEDAW?

The CEDAW Committee monitors implementation and compliance by State Parties. The CEDAW Committee is made up of 23 members, who are independent experts in the field of women's rights from around the world and have been elected for four-year terms by countries that have ratified CEDAW. Officers of the Committee (a Chairperson, three Vice-Chairpersons and a Rapporteur) are elected with regard to equitable geographical representation. Each member serves the Committee in their personal or individual capacity, rather than as a representative of the State Party which presented their candidature. For example, Natasha Stott Despoja has been Australia's nominee on CEDAW since 2021. She does not take directions or instructions from the Australian government. Rather, she undertakes her responsibilities and duties as a Committee member, informed by her expertise in gender equality and women's human rights, not the will of the government of the day.

Every four years, each State Party must submit a report to the CEDAW Committee outlining its progress in eliminating discrimination against women and in achieving gender equality. The CEDAW Committee scrutinises these reports, engages in a constructive dialogue with the State Party, and provides them with its observations, as well as recommendations and guidance to improve their compliance with the treaty (these observations and recommendations are collectively referred to as '**Concluding Observations**').

The CEDAW Committee also issues 'General Recommendations', which provide detailed guidance and clarification on specific articles or themes in CEDAW, and how they should be interpreted. General Recommendations are not directed to individual State Parties (as Concluding Observations are), but rather are applicable to all State Parties. There have been 39 General Recommendations to date, covering a wide range of topics, including violence against women, women's economic empowerment, gender stereotypes and Indigenous women and girls.



Ratifying CEDAW does not necessarily mean that a State Party agrees to each and every article in the treaty. States may make reservations, which seek to exclude or modify the legal effect of certain provisions in the treaty. No State has sought to explicitly exclude the application of CEDAW to transwomen.

Who is bound by CEDAW?

A list of all the countries that have agreed to be bound by CEDAW is available [here](#).⁷ Ratifying CEDAW does not necessarily mean that a State Party agrees to each and every article in the treaty. States may make reservations, which seek to exclude or modify the legal effect of certain provisions in the treaty. Although reservations must not be incompatible with CEDAW's overall object and purpose, this is commonly not adhered to. For example, Saudi Arabia made a broad reservation on 7 September 2000 which provides that,⁸

1. In case of contradiction between any term of the Convention and the norms of [I]slamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.

This general reservation has been criticised by the CEDAW Committee as being 'contrary to the object and purpose of the Convention', and the Committee has encouraged Saudi Arabia to withdraw it, stating that,⁹

9. The Committee is concerned about the general reservation made upon ratification of the Convention by the State party, which is drawn so widely that it is contrary to the object and purpose of the Convention.

10. The Committee urges the State party to consider the withdrawal of its general reservation to the Convention, particularly in light of the fact that the delegation assured that there is no contradiction in substance between the Convention and Islamic Sharia.

To date, Saudi Arabia has yet to comply with this request.

While CEDAW has a lot of State Parties it also has a lot of reservations, which reduce its effectiveness. However, it is worth noting that none of the reservations specifically mention trans women, i.e. no State has sought to explicitly exclude the application of CEDAW to trans women.

Details of all reservations can be found [here](#).¹⁰



1.2 How can CEDAW protect trans women?

CEDAW is the most comprehensive international human rights treaty when it comes to protecting the rights of women. The rights set out in CEDAW are integral to women globally, touching on almost all aspects of their lives including employment, education, health, family life, food and housing, as well as cultural, social and political life.

Trans women – as *women* – can use CEDAW to protect their rights in exactly the same way as cisgender women.

Trans women are ‘women’: Unpacking ‘sex’, ‘gender’ and ‘gender identity’

It appears that the drafters of CEDAW did not turn their minds to defining who is a ‘woman’ for the purposes of the treaty (noting that the drafting process took place from 1976-79).¹¹ However, there is a requirement that treaties be interpreted in accordance with contemporary shared understandings, and in a way that upholds human rights. This means that a binary view of sex is unacceptable, and clear distinctions have to be made between ‘sex’, ‘gender’ and ‘gender identity’.

CEDAW does not define ‘sex’, ‘gender’ or ‘gender identity’, and only the term ‘sex’ is explicitly used (in the Preamble to the treaty and in Articles 1 and 5).

To address these definitional omissions, the CEDAW Committee has defined ‘sex’ and ‘gender’ and, by extension, ‘gender identity’, as seen in General Recommendation 28:¹²

The term sex refers to biological differences between men and women.

The term gender refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can likewise be changed by culture, society and community.

The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1.
[emphases added]

Although there are differing views among commentators and State Parties as to the precise scope and overlap of these definitions (and in particular, whether CEDAW prohibits discrimination), they remain current.¹³

The CEDAW Committee has made it clear that although CEDAW only explicitly refers to sex-based discrimination,¹⁴ the treaty should be read as a whole, and when this is done, it is beyond doubt that CEDAW also prohibits gender-based discrimination.

Does CEDAW protect trans women against gender-based discrimination?

Patricia Schulz, a former CEDAW Committee member asks in the seminal book *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol* (Oxford University Press, 2nd ed, 2022),

Does the Convention provide protection to a person assigned male at birth who transitions to become a transwoman? Would the person be considered a 'woman' within the meaning of the Convention (whatever her status as a woman for other purposes may be under international human rights treaties or domestic law)? And even more broadly, can (and should) the Convention be read to provide protection against discrimination on the basis of gender identity to all?

While arguably this question has not been finally resolved, the CEDAW Committee has indicated on numerous occasions that CEDAW does provide protection to trans women.

(a) The CEDAW Committee considers that rights enshrined in CEDAW apply to trans women

For example, in February 2022, the CEDAW Committee observed in *Rosanna Flamer-Caldera v Sri Lanka* that,¹⁵

[T]he rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women...[.]
[emphasis added]

The above extract is particularly helpful in its application to trans women because this case concerned discrimination against a *lesbian* woman, so the CEDAW Committee didn't need to express a view on whether CEDAW protects *trans women*. The fact that the Committee explicitly addressed trans women when it was unnecessary to do so, indicates that the Committee views trans women as falling within the treaty's purview.

In 2023, the CEDAW Committee recommended in its Concluding Observations that China, Hong Kong and Macau take steps to,¹⁶

(b) Protect the human rights of lesbian, bisexual, transgender and intersex women in all areas covered by the Convention and conduct awareness-raising campaigns to address their stigmatization in society[.] [emphases added]

Further examples of the CEDAW Committee using the term 'woman' when describing transgender persons include,

1. in the report of the Committee on its inquiry concerning South Africa published in May 2021,¹⁷

The Committee calls upon the State Party:

...

To ensure that shelters and safe houses have sufficient capacity to receive victims of domestic violence, including those with

The CEDAW Committee observed in *Rosanna Flamer-Caldera v Sri Lanka* that the rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women.

psychiatric conditions and lesbian, bisexual, transgender and intersex women victims[.] [emphases added]

2. in its findings in respect of an individual communication against the Russian Federation published in February 2020 (and in which it cites its earlier Concluding Observations¹⁸),¹⁹

The Committee recalls its concluding observations on the combined sixth and seventh periodic reports of the Russian Federation (CEDAW/C/USR/CO/7, para. 41), in which it expressed its concern about acts of violence against lesbian, bisexual and transgender women and called upon the State Party to provide effective protection against violence and discrimination against women based on their sexuality, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, including on the grounds of sexual orientation. It also urged the State Party to intensify its efforts to combat discrimination against lesbian, bisexual and transgender women, including by launching an awareness-raising campaign aimed at the general public[.] [emphases added]

For 20 years, the CEDAW Committee has identified intersectionality as a 'basic concept for understanding the scope' of State Parties' obligations under CEDAW.

Affirming that CEDAW protects the right of trans women to be recognised as women, the CEDAW Committee, in 2018, called on Australia to,²⁰

Abolish requirements regarding medical treatment for transgender women who wish to obtain legal recognition of their gender.

(b) The CEDAW Committee considers that the intersectional discrimination experienced by trans women has compounding negative impacts which are relevant to CEDAW

For 20 years, the CEDAW Committee has identified intersectionality as a 'basic concept for understanding the scope' of State Parties' obligations under CEDAW.²¹ It has recognised that, in addition to women suffering from discrimination directed against them as *women*, their experience of discrimination may be aggravated by additional factors associated with their identity.²² Being transgender is an 'additional ground' or 'identity factor' which may impact the discrimination trans women experience (compared to cisgendered women who are not impacted by additional factors). This is recognised in General Recommendation 35, where the CEDAW Committee stated,²³

In general recommendation No. 28 and general recommendation No. 33, the Committee confirmed that discrimination against women was inextricably linked to other factors that affected their lives.

The Committee, in its jurisprudence, has highlighted the fact that such factors include women's ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy,



In General Recommendation 35, the CEDAW committee stated, “because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees”

seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders.

Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed. [emphases added]

Concluding Observations relating to Venezuela, that were published in 2022, reflect the Committee’s commitment to addressing intersectional forms of discrimination,²⁴

Lesbian, bisexual, transgender and intersex women

The Committee notes the steps taken by the State Party to raise awareness among public officials of the rights of lesbian, bisexual, transgender and intersex women. However, it notes with concern that such women continue to face high levels of gender-based violence, intersecting forms of discrimination and stigmatization in the State Party.

The Committee recommends that the State Party prevent and protect lesbian, bisexual, transgender and intersex women from gender-based violence and take measures, such as holding public awareness-raising campaigns, to address their stigmatization. It also recommends that the State Party respect the rights of transgender women to autonomy, self-determination and legal recognition of their gender identity through an expeditious, transparent and accessible procedure. [emphasis added]

These examples recognise that a trans woman’s gender identity is often the source of ‘aggravating’ or ‘compounding’ discrimination.



1.3 Core principles

Good faith, object and purpose

CEDAW must be interpreted in accordance with the general rules of public international law. Every article in CEDAW must be interpreted in 'good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose',²⁵ namely to achieve 'equality of opportunity and treatment' between men and women. The CEDAW Committee expanded on this broad objective in General Recommendation 25, stating that beyond seeking to achieve purely formal legal equality between men and women, CEDAW's objects extend to:

- a. ensuring there is no direct or indirect discrimination against women;
- b. enhancing de facto equality²⁶ of women; and
- c. eliminating the cultural and social roots of gender inequality, being prevailing gender relations and the persistence of gender-based stereotypes that affect women.²⁷

Eliminating discrimination

CEDAW aims to eliminate all forms of discrimination, even those which are not immediately obvious. Discrimination against women is defined in Article 1 as follows:

For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
[emphases added]

Non-discrimination

The definition of 'discrimination against women' in Article 1 can be broken down into the following parts:

1. **'Any distinction, exclusion or restriction'**. This, along with the phrases explained in paragraphs (2) to (4) below, should be read broadly. 'Distinction' includes explicit sex-based differential treatment of women and men, 'exclusion' refers to patterns of belief and social practices (including gender stereotypes) which deny women the opportunities and rights that are available to men, and 'restriction' refers to limitations on the enjoyment of rights to a greater extent than may apply to men's enjoyment of those rights.
2. **'Made on the basis of sex'**. Many people may know 'On the Basis of Sex' as a film about the life of United States Supreme Court Justice Ruth Bader Ginsburg. But it is much more than that. These five words are a seminal part of CEDAW. As already noted above, 'on the basis of sex' extends to gender-based discrimination i.e. differential treatment on the basis of socially constructed identities, attributes and roles for women.



CEDAW prohibits both 'direct discrimination' (i.e. discrimination directed against women because they are women) and 'indirect discrimination' (where an apparently neutral provision, criterion or practice has a distinct and discriminatory impact on women).

More generally, 'discrimination' under CEDAW does not distinguish between individual women or groups of women, as recourse can be obtained by or on behalf of individuals or groups of individuals.²⁸

3. **'Which has the effect or purpose'**. The discrimination need not involve explicit reference to sex or sex-related characteristics and an intention to discriminate is not required. CEDAW prohibits both 'direct discrimination' (i.e. discrimination directed against women because they are women) and 'indirect discrimination' (where an apparently neutral provision, criterion or practice has a distinct and discriminatory impact on women).²⁹ This is consistent with CEDAW's purpose of eliminating 'all forms' of discrimination.
4. **'Of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms'**. This phrase serves two purposes. First, the words 'impair' and 'nullify' clarify that the impact or effect must be adverse i.e. an action or practice which *enhances* women's enjoyment or exercise of their rights and freedoms will not be 'discrimination' within the meaning of Article 1.

Second, the difference in treatment must affect the enjoyment or exercise of women's 'human rights and fundamental freedoms' under the general principles of international law or under human rights conventions, including,

- i. the right to life;
- ii. the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- iii. the right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- iv. the right to liberty and security of person;
- v. the right to equal protection under the law;
- vi. the right to equality in the family;
- vii. the right to the highest standard attainable of physical and mental health; and
- viii. the right to just and favourable conditions of work.³⁰

Substantive equality

While CEDAW recognises the importance of formal equality, it also recognises that formal equality, or simply treating everyone the same regardless of their differences, may lead to unjust outcomes in practice. For this reason, CEDAW endorses 'substantive equality', which includes,

- **equality of opportunity**: laws should ensure that all people have the same opportunities regardless of gender;

- **equality of access to opportunity:** barriers preventing women attaining equal access to opportunities should be removed; and
- **equality of results:** practical, systemic changes toward eliminating discrimination against women.

Using women's right to work as an example, substantive equality might include:

- **equality of opportunity:** implementing policies that promote equal access to education and training for all genders, so that all genders have an equal opportunity to develop their skills and pursue their desired careers;
- **equality of access to opportunity:** removing discriminatory practices in the workplace, such as unequal pay for equal work, providing equal opportunities for career advancement, and preventing gender-based discrimination in recruitment and promotion processes. This is a significant problem, exemplified by high rates of transgender persons being denied or discouraged from career advancement due to being trans, e.g. over 40% of trans survey respondents in Australia, Brazil, France, the United Kingdom ('UK') and the USA, and over 60% in India, reported adverse consequences to their career advancement due to their gender identity; and
- **equality of results:** implementing affirmative action policies that ensure equal representation of women and men in leadership positions in both public and private sectors, and aiming to achieve balanced representation at decision-making levels.

'State obligation'

Articles 2-4 of CEDAW reflect the principle of 'State obligation'. When States agree to be bound by CEDAW, they accept that they are legally required to eliminate discrimination against women and their compliance with the treaty will be monitored by the CEDAW Committee.

'State obligation' can be broken down into several principles, including,

- **obligation of means:** State Parties must take action to eliminate discrimination;
- **obligation of results:** State Parties must ensure any measures taken have practical results which help women realise their rights;
- **duty to respect:** State Parties cannot interfere with the enjoyment of women's rights enshrined in CEDAW;
- **duty to protect:** State Parties must protect against the violation of women's rights in CEDAW by third parties, through regulating and monitoring non-state actors (e.g. by establishing anti-

When States agree to be bound by CEDAW, they accept that they are legally required to eliminate discrimination against women and their compliance with the treaty will be monitored by the CEDAW Committee.

discrimination laws that apply to the provision of goods and services); and

- **duty to fulfil:** State Parties must take proactive measures to ensure that women enjoy, in practice, the same rights as men. Policies and programs should be tailored to fulfil the specific needs of women in a way that enables them to reach their potential.³¹

The obligations under CEDAW also extend to:

a. Conduct of ‘public authorities and institutions’ of the State, under Article 2(d).³²

This includes conduct of the State’s organs or agents, including officials in its executive, legislative and judicial branches.³³ For example, courts must not make decisions that uphold discrimination against women³⁴ and police cannot subject women to gender-based threats or harassment.³⁵

b. Conduct of non-state actors which are attributable to the State, under Article 2(d).

This may arise where a State has delegated its authority to a private body or company, or authorised its conduct or practices.³⁶ For example, the actions of a private contractor providing services in a public prison on behalf of the State, is treated as the conduct of the State, and so the State must ensure the contractor does not discriminate against women.³⁷

c. Conduct of non-state actors which are not attributable to the State, but which demonstrate the State’s failure to take action to eliminate discrimination against women, under Article 2(e).³⁸

State Parties have a positive obligation to adopt diverse measures to protect women from discrimination by non-state actors, such as private individuals or businesses operating in their territory.³⁹ For example, the State has an obligation to take measures to ensure that the activities, policies and practices of private hospitals, corporate healthcare providers and other actors in the private health sector are non-discriminatory.⁴⁰ It is not enough for State Parties to mandate laws and policies, if they fail to ensure they are complied with and enforced.⁴¹ In practice, State Parties will be held responsible if they fail to have laws, institutions and/or systems of enforcement that address discrimination against women by non-state actors.



State Parties have a positive obligation to adopt diverse measures to protect women from discrimination by non-state actors, such as private individuals or businesses operating in their territory.



1.4 How to use CEDAW

Hilary Clinton famously said, 'women's rights are human rights'. That this remark was made, despite its apparent obviousness, captures the widely held frustration that the rights enshrined in CEDAW continue to be violated on a daily basis.

It is largely up to State Parties to implement the rights enshrined in CEDAW. They can do this by,

- a. **Legislation:** States can enact laws enshrining rights and obligations which mirror those provided under CEDAW, including enforcement mechanisms for breaches of the domestic law. In Australia, for example, CEDAW is implemented into domestic law under the national *Sex Discrimination Act 1984* (Cth), as well as, through similar legislation in the eight states and territories that make up Australia. These provide a practical pathway for trans women who are subjected to discrimination on the basis of their gender identity to seek remedies, including financial compensation. For example, a transgender woman who was vilified and harassed because of her gender identity was awarded \$15,000 financial compensation in Queensland, Australia.⁴²
- b. **Judicial enforcement:** In some jurisdictions, state courts can enforce compliance with recommendations made by the CEDAW Committee. For example, in the case of *González Carreño v. Spain* the Supreme Court of Spain ordered that the Spanish Government pay the successful complainant to the CEDAW Committee, €600,000 in compensation.

Unfortunately, domestic protection of women's rights is rarely adequate and/or is inadequately enforced. In response to this widespread failure of domestic compliance, the UN created a number of procedures to monitor compliance with CEDAW and to alert the Committee to non-compliance by State Parties. None of these procedures are binding on State Parties, in the sense that the CEDAW Committee alone cannot strictly enforce State Party compliance with sanctions or other remedies. Nevertheless, the findings and recommendations made by the CEDAW Committee are often invoked by domestic and international NGOs and other State actors (via public or diplomatic channels) to apply political pressure on the State Party to address the Committee's findings.

There are four ways in which trans women and NGOs can engage with the CEDAW Committee, namely,

1. **Reporting and submissions ('Reporting Procedure'):** Every State Party is required to submit periodic reports to the CEDAW Committee explaining the steps it has taken to comply with



Alternative Reports are an opportunity for NGOs to influence the substance of the Committee's Concluding Observations and are by far the most common way NGOs engage with the Committee. Kaleidoscope encourages trans rights and advocacy organisations to engage with the reporting process as a way of increasing the CEDAW Committee's awareness and action around the rights of trans women.

CEDAW and the progress achieved in respecting women's rights in that country since the Committee's previous review (Art. 18). The Committee reviews State Party reports, as well as Alternative Reports submitted by non-state actors, and issues its Concluding Observations that provide guidance to that specific State Party. In addition, the Committee also provides guidance to all State Parties via General Recommendations which it publishes on approximately an annual basis. These processes create opportunities to engage with the Committee by, (i) influencing Concluding Observations, and (ii) influencing General Recommendations.

i. Alternative Reports to influence Concluding Observations

The CEDAW Committee encourages NGOs to contribute to the reporting process by submitting their own information and reports detailing whether and/or how a State Party is implementing CEDAW and complying with previous Concluding Observations, as well as commenting on the State Party's report. These '**Alternative Reports**' also known as 'Parallel Reports' or 'Shadow Reports', provide NGOs and advocates with the opportunity to inform the Committee about relevant issues which the State has either not mentioned, or not accurately reported. The Committee considers Alternative Reports and makes 'Concluding Observations' in respect of the State Party under review. The Concluding Observations may include recommendations that the State Party do more to protect and respect women's rights.

Alternative Reports are an opportunity for NGOs to influence the substance of the Committee's Concluding Observations and are by far the most common way NGOs engage with the Committee. Historically these contributions have been from community-based women's and family violence organisations. Kaleidoscope encourages trans rights and advocacy organisations to engage with the reporting process as a way of increasing the CEDAW Committee's awareness and action around the rights of trans women.

ii. Submissions to influence General Recommendations

The Committee also makes 'General Recommendations' ('**GR**') pursuant to Article 21 of CEDAW. General Recommendations are focused on a particular issue or theme and are directed to all State Parties. To date, CEDAW has published 39 General Recommendations, which have addressed matters such as older women (GR27), rural women (GR34) and Indigenous women (GR39). Because General Recommendations apply to



The Committee drafts a General Recommendation when it considers there is a particular issue hindering the implementation of women's rights under CEDAW. Several General Recommendations have contained references to trans women.

all State Parties, it can be argued that they are more influential than Concluding Observations, which only apply to the particular State under review.

The decision to make a General Recommendation arises from the information the Committee has received from State Parties and NGOs over the course of the country-specific reporting process. The Committee drafts a General Recommendation when it considers there is a particular issue hindering the implementation of women's rights under CEDAW. Several General Recommendations have contained references to trans women, including, for example,

- GR32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, states,⁴³

Discrimination against women based on sex and/or gender is often inextricably linked with and compounded by other factors that affect women, such as ... being lesbian, bisexual or transgender and other status.

Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. [emphasis added]

- GR39 on the rights of Indigenous women and girls, states,⁴⁴

[L]esbian, bisexual, transgender and intersex Indigenous women and girls regularly face intersecting forms of discrimination. [emphasis added]

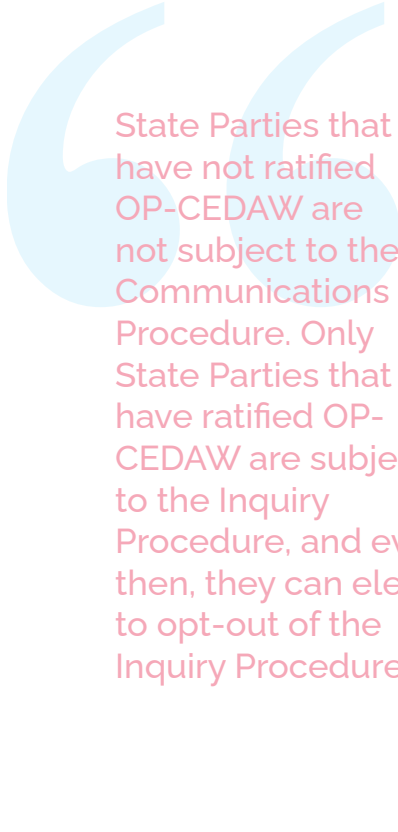
- GR36 on the right of girls and women to education, states,⁴⁵

Limited education and cultural taboos are among the factors that prevent lesbian, bisexual, transgender, and intersex students from achieving social mobility and increase their vulnerability to violence. [emphasis added]

After selecting the theme to be addressed in a General Recommendation, the Committee publishes a draft General Recommendation and a 'concept note' explaining the substance of the proposed General Recommendation and inviting human rights institutions (as well as State Parties, academics and experts) to make submissions on the proposal. NGOs and activists have a significant opportunity to engage with the Committee at this stage and influence the content of the General Recommendation.

On 17 April 2024, Kaleidoscope made a submission to

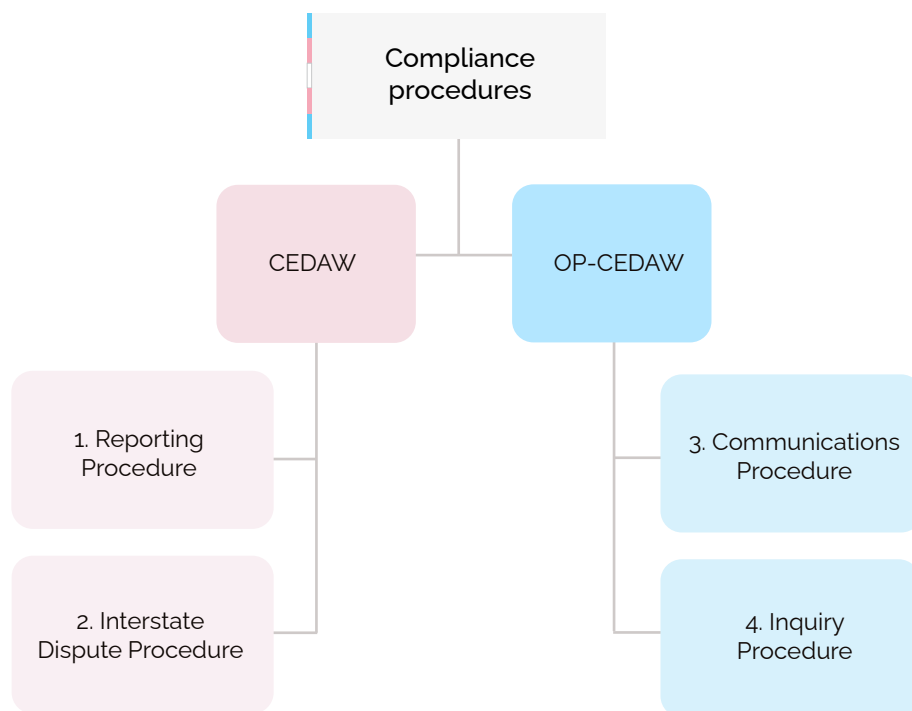
the Committee on draft General Recommendation 40 on the equal and inclusive representation of women in decision-making systems. The submission explained how the draft General Recommendation could be improved to further promote the equal and inclusive representation of trans women, and attached an earlier draft of this Guide for the Committee's consideration.



State Parties that have not ratified OP-CEDAW are not subject to the Communications Procedure. Only State Parties that have ratified OP-CEDAW are subject to the Inquiry Procedure, and even then, they can elect to opt-out of the Inquiry Procedure.

2. **Interstate Dispute Procedure:** under article 29(1), a State Party can dispute another State Party's application of CEDAW, first by negotiation, then arbitration and failing those, referral to the International Court of Justice. This procedure is rarely invoked (and there are no instances of success). It may not even be available, as State Parties are entitled to opt out of this procedure by making a reservation upon signing CEDAW (with the effect that the State Party cannot be subjected to (and cannot initiate) an interstate dispute). International relations, diplomacy and political considerations generally dissuade a State Party from initiating such disputes. Due to the limitations of this mechanism, this Guide only focuses on the other three mechanisms available for monitoring and enforcing compliance with CEDAW.
3. **Individual Communications Procedure:** allows individuals (or NGOs on their behalf) to submit complaints of rights violations to the CEDAW Committee (also referred to as 'individual complaints' or 'individual communications'). State Parties have the power to determine whether they will submit to this aspect of the CEDAW Committee's jurisdiction, that is whether they will consent to the CEDAW Committee receiving individual complaints against them. State Parties that have not ratified OP-CEDAW are not subject to the Communications Procedure.
4. **Inquiry Procedure:** allows any individuals or groups (including NGOs) to submit a request to the Committee for it to commission an inquiry to investigate a complaint of grave or systematic violations of women's rights by a State Party. Only State Parties that have ratified OP-CEDAW are subject to the Inquiry Procedure, and even then, they can elect to opt-out of the Inquiry Procedure. To date, the CEDAW Committee has undertaken seven inquiries; significantly less than the number of individual complaints.

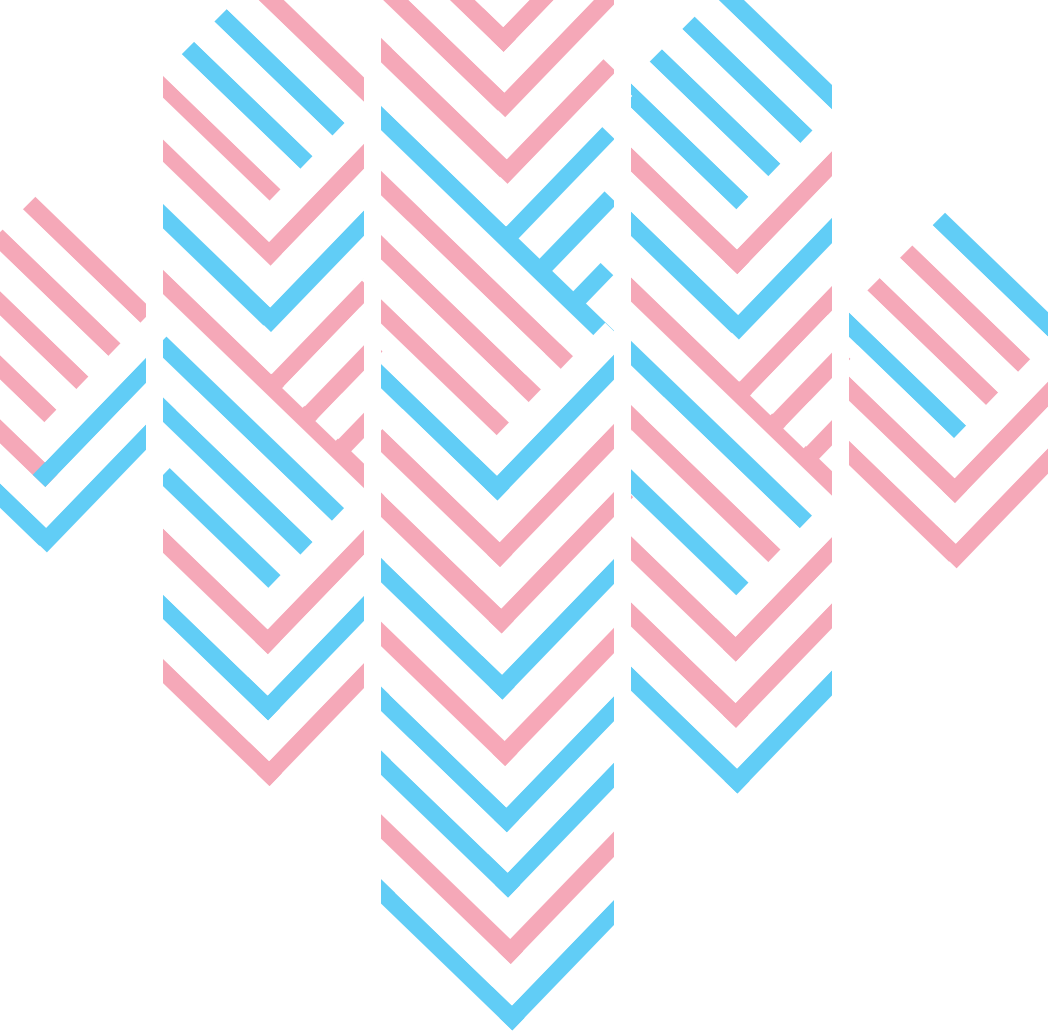
The above four compliance procedures under CEDAW and OP-CEDAW are represented in the following diagram:



As of May 2024, the majority of the 189 State Parties that have ratified CEDAW, have also ratified OP-CEDAW.

As of May 2024, the majority of the 189 State Parties that have ratified CEDAW, have also ratified OP-CEDAW (115 for the Communications Procedure, and 109 for the Inquiry Procedure). Thus, there are still many State Parties that have agreed to be bound by CEDAW, but have not accepted some or all of its practical enforcement mechanisms. A list of the State Parties that have ratified CEDAW and OP-CEDAW is available [here](#).⁴⁶

Further information regarding the Reporting, Communications and Inquiry Procedures, including tips for how to make complaints and what evidence to include, is included in section 3 of this Guide.



Section 2

CEDAW and trans women



2.1 Overview

This section provides practical guidance on the following provisions of CEDAW which are highly relevant and useful for trans women seeking to protect their rights,

1. Stereotyping & cultural prejudices ([Article 5\(a\)](#))
2. Human-trafficking & prostitution ([Article 6](#))
3. Political & public life ([Article 7](#))
4. Education ([Article 10](#))
5. Employment ([Article 11](#))
6. Health ([Article 12](#))
7. Economic & social life ([Article 13](#))
8. Rural women ([Article 14](#))
9. Equality in law, marriage & family life ([Articles 15 & 16](#))

This is not an exhaustive list but provides some guidance on how CEDAW can be used to better protect the rights of trans women. Each section begins with an overview of the relevant article, and discusses potential ways to demonstrate to the CEDAW Committee that a State is not complying with the provision.

In practice, complaints usually allege violations of more than one substantive right under CEDAW. For example, at a school where physical education is divided along sex lines, a trans girl who is excluded from playing or competing in sport with other girls may have suffered a breach of,

- [Article 5\(a\)](#): the physical education is framed in binary terms based on harmful stereotypes;
- [Article 10](#): exclusion from the same opportunity afforded to cisgender women to participate actively in sports and physical education; and
- [Article 12](#): limiting the right to health by precluding or limiting participation in sport.

In practice, complaints usually allege violations of more than one substantive right under CEDAW.



2.2 Stereotyping and cultural prejudices

Article 5(a)

Article 5(a)

States Parties shall take all appropriate measures:

- a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Overview

Article 5(a) requires States to take ‘all appropriate measures’ to eliminate the stereotyping and cultural practices that are at the ‘root’ of discrimination against all women, i.e. to eliminate all forms of stereotyping that lead to direct, indirect and structural discrimination.

Binary gender stereotypes are often a ‘root cause’ of discrimination against trans women. The CEDAW Committee has observed that State Parties must,⁴⁷

[M]odify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. The Committee is of the view that gender stereotypes are perpetuated through a variety of means and institutions including laws and legal systems and that they can be perpetuated by State actors in all branches and levels of government and by private actors.

The CEDAW Committee has explicitly linked gender-based stereotypes and discrimination against trans women. For example, in its Concluding Observations on Finland in 2014, the Committee recommended Finland amend its laws to,⁴⁸

[E]nsure that gender recognition is carried out without requiring transgender persons to conform to stereotypical ideas of masculine or feminine appearance or behaviour.

Unfortunately, these direct statements linking gender stereotyping to discrimination against trans women have been fairly limited, and tend to be confined to secular State Parties with relatively progressive domestic attitudes towards trans women. There is substantial scope for improvement in the CEDAW Committee’s work on this issue. Advocates in States where this is an issue are encouraged to bring these matters to the attention of the Committee and call for recommendations that a State Party take steps to combat the gender stereotypes that contribute to discrimination against trans women. This can be done through the submission of an Alternative Report as part of the Reporting Procedure described in section 1.4 above.

Article 5(a) also has an important function as a ‘gateway’ provision, enabling other rights (or articles) of CEDAW to be accessed. For example, a common experience of trans women is their denial of

Practical tip

Article 5(a) is never relied upon in isolation, but always in conjunction with other articles. As of April 2024, the CEDAW Committee has found violations of Article 5(a) in all 20 instances where a violation of that provision was alleged.⁴⁹ Many of these violations also involved gender-based violence.

access to gender affirming medical care (e.g. hormone therapy and surgery). In many instances, this is due to discrimination based on gender stereotypes that are informed by the 'masculine' and 'feminine' binaries. A trans woman could argue that she has been discriminated against under Article 5(a) by being prevented from accessing health care (in violation of Article 12) because the 'root cause' of that conduct is based on stereotypical ideas of 'masculine' and 'feminine' (or 'men' and 'women').

Beyond individual complaints, Article 5(a) has been relied upon with great success in the context of allegations of grave or systemic violations of CEDAW under the OP-CEDAW's Inquiry Procedure. For example, the CEDAW Committee found, in all seven inquiries to date, that there had been violations of Article 5(a), i.e. in relation to

1. the abduction, rape and murder of women in Mexico;⁵⁰
2. missing and murdered Aboriginal children in Canada;⁵¹
3. the limited ability to gain access to contraceptives in the Philippines;⁵²
4. bride kidnapping in Kyrgyzstan;⁵³
5. access to abortion in the UK;⁵⁴
6. female genital mutilation in Mali;⁵⁵ and
7. domestic violence in South Africa.⁵⁶

Therefore, when bringing a communication to the CEDAW Committee it is worth arguing a breach of Article 5(a) in addition to breaches of substantive rights in the treaty.

Potential evidence of violations

Because Article 5(a) has only ever been used **in conjunction** with other CEDAW articles, the evidence relevant to proving a violation overlaps with the evidence used to substantiate breaches of other articles.

This may include testimonials or data involving practices which prevent trans women from exercising and claiming their rights *because of* binary, gender-based stereotypes, such as those that seek to exclude or restrict trans women from,

- a. playing sport in women's teams;
- b. accessing gender-affirming health care;
- c. being employed in jobs advertised to 'women';
- d. accessing sex-specific premises (e.g. toilets and changing rooms);
- e. using gender neutral or female pronouns; and
- f. wearing uniforms that align with their gender identity.

It may also include testimonials or data demonstrating that rates of discrimination, harassment, humiliation, abuse or arrest, that are due primarily to a trans woman's gender identity, are escalated by the intersectional presence of attributes such as race or disability. In Australia, *for example*, brotherboys, sistergirls and other LGBTQI First Nations peoples, experience multiple intersecting points of discrimination. Almost one in two brotherboy and sistergirl young people have attempted suicide, which is 20 times higher than the rate in the adolescent general population in Australia.



2.3 Human trafficking and prostitution

Article 6

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Note

While Article 6 refers to 'prostitution', the term 'sex work' and 'sex worker' are the preferred terminology.

Overview

The CEDAW Committee has stated that trafficking and sexual exploitation are forms of gender-based violence as they are 'unequivocally a phenomenon rooted in structural, sex-based discrimination'⁵⁷, resulting in gender-differentiated impacts,⁵⁸

A gender analysis of the crime reveals that its root causes lie in sex-based discrimination, including the failure to address the prevailing economic and patriarchal structures and the adverse and gender-differentiated impact of the labour, migration and asylum regimes of States parties that create the situations of vulnerability leading to women and girls being trafficked.

The CEDAW Committee has emphasised that 'root causes' of discrimination in the context of sex work include binary, paternalistic ideas of 'masculinity' and 'femininity',⁵⁹

The Committee regards gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.

Social norms regarding 'masculinity' and enforced 'gender roles' can detrimentally affect trans women. For example, a [Mexican study](#) found that,

[T]he vulnerability of transgender sex workers is compounded by the additional stigma (related to higher visibility and lower ability to 'pass'), lack of social capital and absence of specific health services and risk reduction outreach programs.

The CEDAW Committee appears not to have significantly engaged with the discrimination and other rights violations experienced by trans sex workers. Given the research cited above regarding the compounding factors specific to transgender sex workers, Article 6 is likely to be of significant relevance to trans women engaging in sex work. For example, in 2023, a Colombian student was convicted

of manslaughter, rather than murder, after killing a sex worker in Australia, when he discovered she was a trans woman.⁶⁰ Of the 321 trans and gender diverse people murdered between 1 October 2022 and 30 September 2023, *48% were known sex workers*.

Potential evidence of violations

Evidence in support of a violation of Article 6 may include written material indicating the government, law enforcement or an individual's failure to take appropriate measures to suppress trafficking and sexual exploitation. For example:

- a. **Testimonials or data demonstrating discrimination against trans women who have experienced trafficking and sexual exploitation.** This may include personal accounts from trans women sex workers who have experienced stigma, violence and/or sexual assault in the context of their sex work. For example, a *recent USA study* has documented the work experiences, mental health and stigma faced by young trans women while performing sex work.
- b. **Testimonials or data demonstrating that, when trans women seek police assistance or protection, they are subjected to harassment, humiliation, abuse or arrest due to their gender identity.** This may be evidenced in personal stories of trans women who have faced brutality and intimidation, as well as the use of force or threats by police to extort them for money or free sexual services.
- c. **Evidence of higher rates of trafficking and sexual exploitation among trans women than cisgender women.** This is particularly important given there is little data surrounding trafficking specifically in the transgender context. Studies have shown that sex trafficking of trans women is highly underreported. However, from the data available, it is clear that trans women sex workers face disproportionate levels of victimisation on the bases of their gender identity as well as the highly stigmatised nature of their work. This leaves them with an inability to access adequate protection and care services, and perpetuates an environment where trans women are subjected to higher exploitation and trafficking rates.



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2.4 Political and public life

Article 7

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a. *To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- b. *To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- c. *To participate in non-governmental organizations and associations concerned with the public and political life of the country.*

Overview

Article 7 requires State Parties to take appropriate measures to ensure equality in political and public life. This right is of particular importance to trans women, with discrimination in political and public life on the rise globally. Examples include repressive measures such as *transgender voting bans* in Russia and several African States. Such measures can also take the form of so-called ‘lifestyle’ or ‘propaganda’ bans. For example, *the expansion of Russia’s ‘LGBT propaganda’ laws* in 2022 mean that public expression of transgender ‘lifestyles’ is banned, and *more recently*, Russia has outlawed all public expressions associated with the ‘international LGBT public movement’, including the display of rainbow flags. Given that Russia has ratified both CEDAW and OP-CEDAW, such laws would fall squarely within the scope of Article 7, and could be challenged.

More generally, it should be understood that ‘political and public life’ is a broad concept, referring to the exercise of political power, including the exercise of legislative, judicial, executive and administrative powers. It covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. It also includes aspects of civil society such as public boards and local councils, political parties, trade unions, professional and industry associations, trans organisations, community-based organisations and other organisations concerned with public and political life.

General Recommendation 23, pertaining to Article 7, does not specifically reference transgender organisations as falling within this category. However, it has not excluded them. Here, the best position to take would be to assert that State Parties’ obligations to take appropriate measures to ensure equality in ‘political and public life’ applies to trans women as much as cisgender women. In 2022, the CEDAW Committee found that Sri Lanka failed to protect a lesbian woman against harassment, abuse and threats in the course of her work in a civil society organisation that promoted the rights of transgender, lesbian, gay and intersex persons in Sri Lanka. Relevant to the CEDAW Committee’s finding were factors including that the complainant, Rosanna Flamer-Caldera,⁶¹

- a. faced frequent threats and abuse from police, the media and the public in connection with her work;
- b. was placed under surveillance; and
- c. was forced to move her organisation's materials to a secure location.

This decision by the CEDAW Committee provides strong support for the contention that State Parties have an obligation to protect a transgender activist in similar circumstances.

Potential evidence of violations

Evidence in support of a violation of Article 7 could include written material relevant to restricting or excluding trans women's,

- a. right to vote and eligibility for public office;
- b. participation in, and formulation of, government policy;
- c. freedom of organisation and protest (for example, participating in protests advocating for the rights of trans women); and/or
- d. right to citizenship and nationality rights.

Examples could include:

- a. **Testimonials or data regarding discrimination of trans women in political and public life, including civil society.** For example, testimonials of trans women who have experienced inadequate police protection at events with a transgender focus. Evidence could also be presented to the CEDAW Committee demonstrating a failure of a State to take appropriate measures to ensure its law enforcement agencies have taken all appropriate measures to eliminate the discrimination experienced by trans women at the hands of police.
- b. **Evidence of legal restrictions or practical barriers to participation in political and public life.** *For example*, various US States require persons to show identity documents prior to voting at polling booths with the effect that transgender persons whose identity documents do not match their gender identity may be precluded from voting. Alternatively, evidence could be produced of laws or policies prohibiting the 'promotion' of transgender 'lifestyles' in public. For example, recent restrictions in Russia aimed at specifically targeting transgender individuals, such as bans on accessing gender-affirming health services, dissolutions of transgender people's marriages, prohibitions on transgender people adopting children and bans on trans individuals changing their gender marker on State documents.

Evidence in support of a violation of Article 7 could include written material relevant to restricting or excluding trans women's ... freedom of organisation and protest.



2.5 Education

Article 10

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d. The same opportunities to benefit from scholarships and

Overview

The CEDAW Committee has recognised that transgender students' limited access to education constrains their ability to improve their future socio-economic circumstances and increases the likelihood that they will be subjected to violence. Additionally, the CEDAW Committee has emphasised the importance of State Parties addressing stereotyping and discrimination of the kind that creates barriers to marginalised groups accessing education,⁶²

Bullying, harassment and threats against such students by fellow students and teachers constitute barriers to their right to education. Schools perpetuate and reinforce social prejudices, often as a result of the poor implementation of policies by school governance bodies, as well as irregular enforcement of non-discrimination policies by teachers, principals and other school authorities. Limited education and cultural taboos are among the factors that prevent ... transgender ... students from achieving social mobility and increase their vulnerability to violence. [emphasis added]

In practice, the CEDAW Committee has generally taken a four-pronged approach to protecting women's and girls' right to education⁶³. Namely, that State Parties should,

- a. adopt anti-bullying policies accompanied by adequate awareness-raising measures in educational institutions to foster equal rights for trans girls and women;⁶⁴
- b. adopt additional strategies, such as counselling services and positive discipline, to address the bullying;⁶⁵
- c. build the capacities of educational staff to create safer and more inclusive learning environments;⁶⁶ and
- d. develop confidential reporting systems in education facilities for trans girls and women who have been bullied or subjected to discriminatory statements and enable State Parties to appropriately sanction those responsible.⁶⁷

Potential evidence of violations

Evidence in support of a violation of Article 10 could include documentation that demonstrates restrictions and/or exclusion of trans women's and girls' access to education. It may also include

- other study grants;*
- e. *The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*
 - f. *The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;*
 - g. *The same opportunities to participate actively in sports and physical education;*
 - h. *Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.*

documentation or policies that are designed to exclude, or have the effect of excluding, transgender-related content from education, e.g. school curricula, textbook materials, school programs or teaching methods.

Examples could include,

- a. **Testimonials or data regarding students being denied admission or expelled from school due to their gender identity.** This is particularly relevant in faith-based institutions, where denial of admission, or expulsion, is permitted if being transgender is considered 'inconsistent' with faith-based teachings. A [recent report](#) by Equality Australia found widespread discrimination and exclusion of students in Australian religious schools, based on their sexual orientation or gender identity. The impact that discrimination and exclusion have on educational attainment is particularly acute in rural areas, where faith-based education providers may be the only option.⁶⁸ This can have significant implications on affected individuals' life trajectories, with studies in the USA finding that anti-trans expulsion or denial of enrolment is linked to increased risk of incarceration.⁶⁹
- b. **Testimonials or data regarding students being discriminated against or harassed by school officials (including principals, teachers or counsellors) or local authorities because of their gender identity.** This could include guidance counsellors failing to support bullied transgender students, misgendering students, using discriminatory language or failing to respond appropriately to reports of harassment.
- c. **Testimonials or data regarding the censorship of transgender-related content in education materials.** Examples of this are currently being seen in Hungary with '[book bans](#)', including, but not limited to, transgender-related bans. And in 2023, [Kenya passed a law](#) that bans 'public discussion, reporting and distribution' of (amongst other things) transgender-related content, which will necessarily also result in censorship of educational materials. These reports and studies are all examples of the sort of evidence that could be presented to the CEDAW Committee to illustrate country specific breaches of Article 10.
- d. **Testimonials or data regarding drop-out rates among transgender students as compared to the general student population.** An example of such data is the 2011 Indian census which found [almost 44% of transgender persons were illiterate](#) compared to 26% of the general population. Comparing multiple data sets over time can also be a useful exercise, for example, this data could be compared with incoming data from the 2024 Indian census which is due to be undertaken following the Indian election. More generally,



Laws banning transgender girls from wearing skirts and requiring students to dress consistent with their biological sex would be strong evidence to bring to the attention of the CEDAW Committee.

studies have identified that transgender students' heightened exposure to resentment, prejudice and threatening situations at school lead to significant drop-out rates, and much lower levels of progression to higher education.

e. **Testimonials or data that capture the damaging effects of change or suppression (conversion) practices in schools.**

For example, [research](#) conducted in Australia on conversion practices found that 7% of the 3134 LGBTQA+ youth surveyed reported experiencing conversion practices in schools which it also found was associated with persons feeling less safe at school. A recent Australian report lists the harm caused by conversion practices, including self-hatred, thoughts of suicide and loss of community.⁷⁰ Similarly, the [UK Government Equalities Office](#) has highlighted the increasing qualitative evidence which indicates that exposure to conversion practices correlates with numerous adverse health outcomes, such as suicide attempts.

f. **Laws and policies that prohibit students from expressing their transgender identity.** For example, laws '[banning transgender girls from wearing skirts and requiring students to dress consistent with their biological sex](#)' would be strong evidence to bring to the attention of the CEDAW Committee. This is because, [research](#) suggests that for transgender students, having to comply with dress codes that involve them presenting in a manner incongruent with their gender identity, has negative educational ramifications, because it can lead to school avoidance, and ultimately, dropping out of school altogether.



2.6 Employment

Article 11

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - a. The right to work as an inalienable right of all human beings;
 - b. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - c. The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - d. The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - e. The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

Overview

State Parties are required to ensure women's equal opportunity in the sale of their labour and to address the harm caused by gender-based economic inequality. This includes eliminating discrimination against women in the field of employment and securing equality in the right to work, employment opportunities, employment conditions, remuneration, social security and health and safety.

The fact that trans women are subjected to intersectional discrimination means that they are prone to higher unemployment rates, more significant wage gaps and lower paid jobs. [Data](#) also suggests that more than 25% of transgender people have lost their job due to bias, and more than 75% have experienced some form of workplace discrimination. The recently published '[Early Insights: A Report of the 2022 U.S. Transgender Survey](#)' states that the unemployment rate among the 92,329 binary and non-binary transgender survey respondents was 18% (significantly higher than the national unemployment rate of 3.7% in [November 2022](#)).

The CEDAW Committee has reiterated the application of CEDAW to trans women in the employment context, stating that,⁷¹

The Committee takes note of the measures taken to promote equal opportunities for lesbian, bisexual, transgender and intersex women, including non-discrimination in the workplace. It nevertheless notes with concern that lesbian, transsexual and transgender women and girls in Hong Kong, China, continue to face intersecting forms of discrimination, in particular in accessing ... employment.

This observation by the Committee was made in May 2023. While it is encouraging to see the Committee addressing this issue, it is regrettable that it so recently used the term 'transsexual', which medicalises a person's gender identity and can be considered offensive. It illustrates the need for further education of Committee members regarding language around gender identity.

Potential evidence of violations

Evidence in support of a violation of Article 11 could include written material relevant to restrictions and exclusions relating to trans women's:

1. access to work;
2. freedom to choose to work; and/or
3. equal remuneration and working conditions of employment.

- f. *The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*
2. *In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*
 - a. *To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
 - b. *To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
 - c. *To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
 - d. *To provide special protection to women during pregnancy in types of work proved to be harmful to them.*
3. *Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

Examples of evidence in support of alleged violations of Article 11 could include:

- a. **Testimonials or data regarding discrimination against trans women, including in relation to hiring, promotion, dismissal, remuneration and working conditions, as well as harassment and bullying.** A useful example of how such data can be captured is the [2021 McKinsey report](#) which describes under-representation, under-employment and under-payments faced by trans women in the workplace. In Australia, for example, federal legislation allows religious educational institutions to ‘discriminate in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion’, on the basis of gender identity, in connection with both employment and the engagement of a person as a contract worker.⁷² The Australian government’s recent *Intersectionality at Work* report (focusing on public sector workplaces) found that trans women are *particularly* under-represented in managerial roles, with only 4% of trans women holding senior managerial roles (as opposed to 7% of cisgender women, and 13% of cisgender men), despite working full-time roles at the same rate as cisgender women (45%, and 44%, respectively). Sixteen percent of trans women **reported** experiencing sexual harassment – a figure that far eclipses the rate of harassment experienced by cisgender women (6%).
- b. **Testimonials or data regarding persons facing barriers to recruitment and retention.** A Boston Consulting Group study covering Australia, Brazil, France, Germany, India, Mexico, the UK and USA found that, in each country, [*transgender persons often chose not to apply to a job or left a company*](#) because of the company’s lack of transgender or gender non-conforming policies.
- c. **Evidence of legal restrictions or practical barriers against the hiring of transgender persons.** This may include restrictions which are indirectly discriminatory. For example, restrictions on using restrooms which do not correspond to the transgender person’s biological sex, or a lack of gender-neutral restrooms. It may also include policies that require dress codes that prevent transgender people from expressing their gender identity in the workplace. For example, in [*Thailand*](#), the absence of any mechanism for transgender individuals to receive identity documents that match their gender identity, is a practical barrier to securing employment. In effect, this forces transgender individuals to disclose that they are transgender in the job application process, when identity documentation is required. [*Research*](#) shows that this often results in harassment, degrading treatment, and reduced employment prospects, contributing to transgender individuals’ overrepresentation in informal work and further heightening their vulnerability to mistreatment or inequal treatment and remuneration.



2.7 Health

Article 12

Article 12

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*
2. *Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*

Overview

This Article places an obligation on State Parties to ensure equal access to healthcare services by taking all appropriate measures to eliminate discrimination against women. The CEDAW Committee recommends that State Parties implement a comprehensive national strategy to promote women's health throughout their lifespan. This includes interventions aimed at both the prevention and treatment of diseases and conditions affecting women, responding to violence against women and ensuring universal access for all women to a full range of high-quality and affordable healthcare, including sexual and reproductive health services.

While Article 12 refers to ensuring access to healthcare 'on a basis of equality between men and women', the Committee adopts an inclusive conception of gender as socially constructed identities that give meaning to biological differences.⁷³ In practice, the CEDAW Committee has noted that the scope of Article 12 encompasses the elimination of discrimination affecting trans women's engagement with healthcare services. This includes recommending that States Parties amend their legislation to meet their obligations under Article 12 by ensuring the legal recognition of transgender persons without requiring conformity with gender stereotypes.⁷⁴ In some instances, the CEDAW Committee has expressly urged State Parties to abolish legal requirements for transgender persons to undergo surgical intervention in order to obtain formal recognition in their gender identity.⁷⁵

Article 12 is a significant protection for trans women given the central nature of healthcare to the safety and wellbeing of trans women and the prevalence of discriminatory practices in this sector across the world.

Potential evidence of violations

Evidence in support of a violation of Article 12 could include written material relevant to restricting or excluding trans women's,

- a. healthcare, including forced 'care';
- b. access to healthcare (e.g. discriminatory restrictions on access to gender-affirming surgeries); and/or
- c. quality healthcare.



Evidence in support of a violation of Article 12 could include written material relevant to restricting or excluding trans women's ... access to gender-affirming surgeries.

Examples could include:

- a. **Testimonials or data identifying discrimination against, or stereotyping of, trans women by medical professionals.** For example, evidence of medical professionals providing inappropriate medical treatment to trans women. Data from the USA suggests that nearly half of transgender adults say healthcare providers know 'not too much' or 'nothing at all' about providing healthcare to transgender people. Nearly 40% say it is 'somewhat' or 'very difficult' to find a healthcare provider who treats them with dignity and respect, including unnecessary psychiatric care to 'cure' them. This may include change or [suppression \(conversion\) practices](#) which are State sanctioned ([as occurred in Uganda in 2023](#), when parliament passed an *Anti-Homosexuality Act*), and seek to 'rehabilitate' sexually and gender diverse people.
- b. **Evidence of legal restrictions or practical barriers to healthcare. For example, prohibitions on gender-affirming medical care.** In 2023, [Russia](#) introduced a bill seeking to ban hormone treatments, and surgical interventions. Similar policies apply in many Middle Eastern countries. [Egypt](#) has implemented 'chromosome trap' clauses, which operate to deny transgender people from accessing gender-affirming healthcare. More generally, evidence of practical barriers to accessing healthcare may include – as found in [Australian research](#) - prohibitive costs in accessing healthcare, shortages of doctors with relevant expertise and pervasive discrimination. In the UK, for example, individuals wishing to undergo hormone therapy must first be assessed by a multi-disciplinary specialist team and fulfil the criteria for a diagnosis of gender incongruence.⁷⁶
- c. **Evidence of transgender identity being treated as a disorder (under various terms) by national medical associations or in national medical standards and classifications.** This may also involve consequential (and discriminatory) medical care, including misrepresentation of 'gender incongruence' as trauma, or pathologising trans people as being broken and in need of fixing, a medicalised form of the ideologies that underpin change or suppression (conversion) practices. It may extend to medical policies which deprive trans women of their right to choose whether to have children or not. For example, nine countries in the EU and Central Asia (Bosnia & Herzegovina, Czech Republic, Finland, Kosovo, Latvia, Montenegro, Romania, Serbia, and Türkiye), currently have forced sterilisation policies which apply to transgender persons as a precondition to obtaining gender affirming healthcare.



2.8 Economic and social life

Article 13

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a. *The right to family benefits;*
- b. *The right to bank loans, mortgages and other forms of financial credit;*
- c. *The right to participate in recreational activities, sports and all aspects of cultural life.*

Overview

State Parties must take appropriate measures to ensure women's equality in all areas of economic and social life, including cultural life. While Article 13 lists family benefits, financial rights and recreational and sports activities as particular focus areas, it is intended to act as a 'catch-all' provision that recognises the impacts of gender-based discrimination across all facets of life.

Article 13(c) is particularly important to trans women given the suite of recent measures taken by State Parties to restrict trans women's participation in sport (and cultural life more broadly). For example, the [Rugby Football Union in England](#) sought to ban trans women from participating in the league in July 2022.

Though less common, Article 13(b) is also relevant to trans women given that reports show transgender people face a disproportionate degree of exclusion and mistreatment from financial institutions, reducing their ability to access financial credit. For example, in-depth interviews of transgender persons in [India](#) found that the transgender community faces additional barriers to inclusion in the formal financial system. This was attributed to, among other reasons, stigmatisation from bank staff, excessive requirements for the provision of legal documentation and exclusion of transgender persons from financial literacy programs.

While the CEDAW Committee's jurisprudence is limited in respect of trans women's rights in these contexts, there are several scenarios where Article 13 may be violated in respect of trans women.

Potential evidence of violations

Evidence in support of a violation of Article 13 may include written material relevant to restricting or excluding trans women's,

1. access to social security;
2. access to financial products or credit;
3. participation in sport and recreational activities; and/or
4. participation in cultural life.

Examples could include:

- a. **Testimonials or data identifying discrimination against trans women by financial institutions or insurers.** For example, evidence of banks refusing to provide loans,



Evidence of trans women being denied participation in cultural life can also take place online, for example, a case is currently before the courts in Australia concerning a trans woman being denied access to a female-only app under the guise of it being 'made for women by women'.

mortgages and other forms of credit, or insurers refusing to provide insurance policies. In [Kenya](#), many transgender individuals use informal lenders charging high interest rates due to being denied credit by formal financial institutions.

- b. **Testimonials or data identifying discrimination against trans women by government or organisations in the provision of family benefits or other welfare or social security.** For example, evidence of failing to fulfil eligibility criteria as a result of being transgender.
- c. **Evidence of legal barriers to trans women's right to participate in sport.** For example, the [UK's](#) bans and prohibitions on the ability of trans women athletes to compete in female categories. In the [USA](#), 72 bills were introduced in 2023 to ban transgender students from competing in athletic events consistent with their gender identity around the USA; a sharp increase from the 29 bills introduced in 2022. Evidence that these legal barriers have been overturned by courts should be included, for example the [United States Court of Appeals for the Fourth Circuit](#) blocked such a bill introduced in West Virginia, and the [United States District Court of Arkansas](#) found a similar bill was unconstitutional.
- d. **Evidence of trans women being denied access to recreational or cultural activities.** For example, testimonials or data identifying discrimination against trans women by being denied entry into 'women's only' venues or events, or being denied membership to social clubs, associations, organisations, etc. In [Canada](#), a trans woman was denied access to a women-only gym. The gym owner stated: '... we also have to worry about the young girls that this gym is set up for and the women, and how are their parents gonna feel that they're in there, then this person walks in with a male voice and big person'. Evidence of trans women being denied participation in cultural life can also take place online, [for example](#), a case is currently before the courts in Australia concerning a trans woman being denied access to a female-only app under the guise of it being 'made for women by women'.



2.9 Rural women

Article 14

Article 14

1. *States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.*
2. *States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:*
 - a. *To participate in the elaboration and implementation of development planning at all levels;*
 - b. *To have access to adequate health care facilities, including information, counselling and services in family planning;*
 - c. *To benefit directly from social security programmes;*
 - d. *To obtain all types of training and education, formal and non-formal, including that relating to functional literacy,*

Overview

State Parties must take appropriate measures to ensure the application of CEDAW to women in rural areas. Separate recognition of the position of rural women is important given rural women represent a quarter of the world's population.⁷⁷

Article 14 is important to trans women insofar as it highlights the intersectionality of discrimination, with rural trans women being disproportionately vulnerable to discrimination.⁷⁸ This is in part explained by stereotyped gender roles, inequality within the household and a lack of infrastructure – all of which are exacerbated in rural areas.⁷⁹

For example, a 2019 study in the USA found that one in six transgender people live in rural areas, and often face significant health disparities, obstacles to economic security, mistreatment and violence, and less transgender-inclusive laws and policies than their urban peers.⁸⁰ Although the CEDAW Committee has not defined who is a 'rural' woman, it has linked rural status to both geography *and* exclusion from services and opportunities,⁸¹

Globally, and with few exceptions, on every gender and development indicator for which data are available, rural women fare worse than rural men and urban women and men, and rural women disproportionately experience poverty and exclusion. They face systemic discrimination in access to land and natural resources. They carry most of the unpaid work burden owing to stereotyped gender roles, inequality within the household and the lack of infrastructure and services, including with respect to food production and care work...[.]

While the CEDAW Committee has not extensively considered trans women in rural areas, there are several scenarios where Article 14 may be engaged in respect of trans women.

Potential evidence of violations

Evidence in support of a violation of Article 14 may include written material relevant to restricting or excluding trans women's,

1. access to healthcare in rural areas;
2. access to social security in rural areas;
3. access to adequate living conditions in rural areas;
4. freedom from discrimination and violence in rural areas; and/or

as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

- e. To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- f. To participate in all community activities;
- g. To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h. To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

- 5. access to social, legal and political protection from discrimination.

Examples could include:

- a. **Testimonials or data regarding rural trans women being unable to access healthcare services.** For example, rural transgender people in the USA are more likely to be denied coverage for gender-affirming surgeries (69% compared to 55% of transgender people generally).⁸² Living in remote or rural areas can significantly impede access to specialised trans health services, due to a reduced presence of trans-informed professionals. A study into transgender healthcare in rural northeastern USA states found that trans women are more likely to experience barriers to gender-affirming care than transgender men.
- b. **Testimonials or data regarding rural trans women being discriminated against or harassed due to identifying as transgender.** For example, rural residents in the USA are less supportive of 'LGBT-inclusive non-discrimination policies' than urban residents (62% to 54%), and given the majority of transgender adults in the USA report living in rural areas, they face a greater risk of discrimination than their urban counterparts.⁸³ Transgender individuals living in rural regions tend to be more prone to more frequent acts of discrimination. A study demonstrated that transgender individuals living in rural areas in Australia and the UK experience heightened stigmatisation and discrimination compared to their metropolitan counterparts.



2.10 Equality in law, marriage and family life

Article 15 and 16

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - a. The same right to enter

Overview

State Parties must ensure equality before the law, which means equal access to justice, a non-discriminatory system of law at all levels and equal protections for all people. They must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family matters.

In relation to legal equality, the CEDAW Committee has expressly acknowledged, in General Recommendation 33 on women's access to justice, that trans women face greater difficulties in gaining access to justice.⁸⁴

Trans women (and transgender people generally) also face unique legal issues with regard to marriage.

The CEDAW Committee has not explicitly considered Articles 15 or 16 in the context of trans women's relations, let alone specifically in the context of transgender rights to marriage equality. However, the CEDAW Committee has stated that Articles 15 and 16 apply to 'all the various forms of family', and there is scope for continued advocacy in this area. For example, in General Recommendation 29 on Article 16 published in 2013, the CEDAW Committee recognised State Parties' obligation to address gender-based discrimination in respect of 'all the various forms of family', stating that,⁸⁵

States parties are obligated to address the sex- and gender-based discriminatory aspects of all the various forms of family and family relationships. In respect of discrimination against women, they must address patriarchal traditions and attitudes and open family law and policy with the same scrutiny that is given to the 'public' aspects of individual and community life.

In 2017, the CEDAW Committee recommended in Concluding Observations to Monaco that, among other things, it adopt legislation enabling lesbian women to marry *and* for change of sex markers in official documents for trans women,⁸⁶

[T]he State party provide lesbian, bisexual, transgender and intersex women with the necessary protection from discrimination and violence and:

- a. Adopt specific anti-discrimination legislation and criminal law provisions explicitly recognizing violence based on sexual

- into marriage;
 - b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - c. The same rights and responsibilities during marriage and at its dissolution;
 - d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - h. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all

orientation or on being transgender or intersex as an aggravating factor;

- b. *Revise existing laws to ensure that lesbian couples have access to marriage or, as a minimum, to an officially registered union, as well as to adoption;*
- c. *Adopt legislation allowing for change of sex marker in official documentation for trans women.*

Despite an absence of explicit statements around the general application of Article 16, the CEDAW Committee's comments do demonstrate the evolving nature of the application of Article 16 to non-heterosexual women *and* trans women.

Unfortunately, for now the CEDAW Committee has limited Articles 15 and 16 to State Parties where romantic relationships among transgender people are legally recognised, noting that such unions (including, but not limited to, marriage) are 'not legally, socially or culturally accepted in a considerable number of State Parties'. For example, the following statements in relation to lesbian women could be readily applied to trans women,⁸⁷

Certain forms of relationships (i.e. same sex relationships) are not legally, socially or culturally accepted in a considerable number of States parties. However, where they are recognized, whether as a de facto union, registered partnership or marriage, the State party should ensure protection of economic rights of the women in these relationships.

To further complicate the difficulties with marriage equality for trans women, some State Parties have passed laws to ban the legal recognition of a person's transgender identity, effectively foreclosing rights to marry in accordance with their identified gender. **For example**, in 2020 the Hungarian Government passed a law banning transgender and intersex people from legally changing their gender, a law which was upheld by the Constitutional Court of Hungary in early 2023. In July 2023, Russia passed a law dissolving transgender people's marriages, banning them from adopting children or becoming foster parents and preventing them from changing their gender in state documents.

Accordingly, while there remains scope for complaints by trans women for violations of their Articles 15 and 16 rights, their effectiveness will depend on arguing that underlying prejudice and social stigma is the true source of discrimination (i.e. arguing the violation of these articles in tandem with Article 5(a)).

Potential evidence of violations

Evidence in support of a violation of Articles 15 and 16 may include written material relevant to restricting or excluding trans women's,

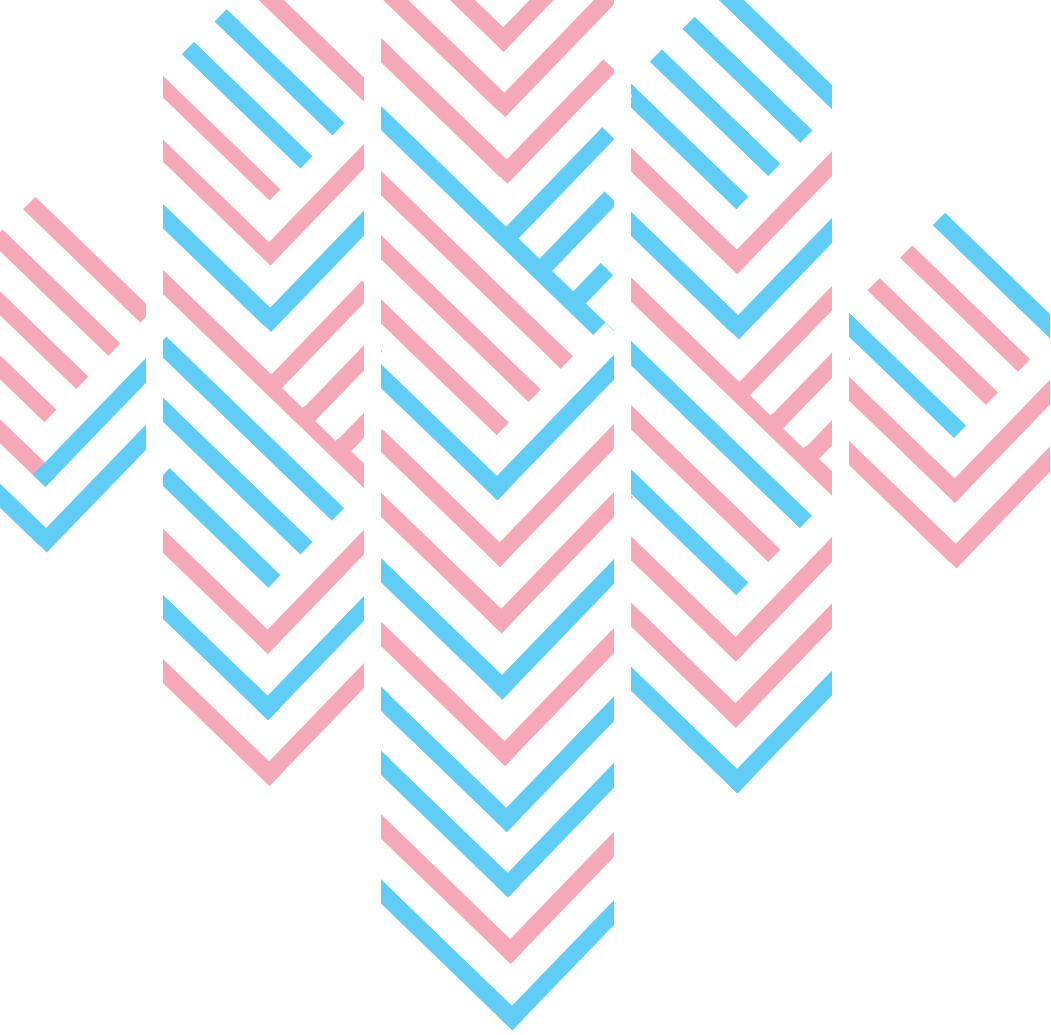
1. rights to enter into contracts;
2. rights to own property;

necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

3. freedom of movement and residence;
4. rights to freely marry a person of their choosing (and for legal recognition of these arrangements); and/or
5. rights to parenthood, adoption and custody of children (noting that the best interests of children are prioritised).

Examples could include:

- a. **Testimonials or data regarding trans women being discriminated against or denied legal rights due to their trans identity.** For example, any laws that restrict, or seek to dilute, trans women's rights to equality before the law, in particular, the right to enter into contracts and to own property. Egypt, Lebanon, and Tunisia lack clear avenues for transgender people to obtain legal gender recognition, increasing their vulnerability to systemic discrimination in areas such as housing. *In Lebanon*, Mona described her experience with housing: 'When [the landlords] found out that I'm transgender, they refused [to lease me the house]. One landlord told me I can rent on someone else's ID if I have a brother, but not mine.'
- b. **Evidence of legal barriers to trans women's right to enter into marriage.** For example, any laws that forcibly dissolve or annul registered marriages upon changing gender, or otherwise ban trans women from entering into marriage. Although China accepts some transgender rights, it requires citizens to undergo gender reassignment surgery in order to have their gender identity legally recognised. *However*, China bans same-sex marriage, meaning citizens must undergo sex reassignment surgery if they want the right to marry and to have their affirmed gender legally recognised. *Similarly*, in countries which do not allow same-sex marriages, transgender persons face significant challenges in situations where they have entered into a different-sex marriage, and wish to stay married after obtaining legal gender recognition. This issue was the subject of the UN Human Rights Committee's decision made in 2017 in the case of *G v Australia* that forcing a trans woman to become divorced in order to update the gender marker on her birth certificate violated her rights to family and privacy.

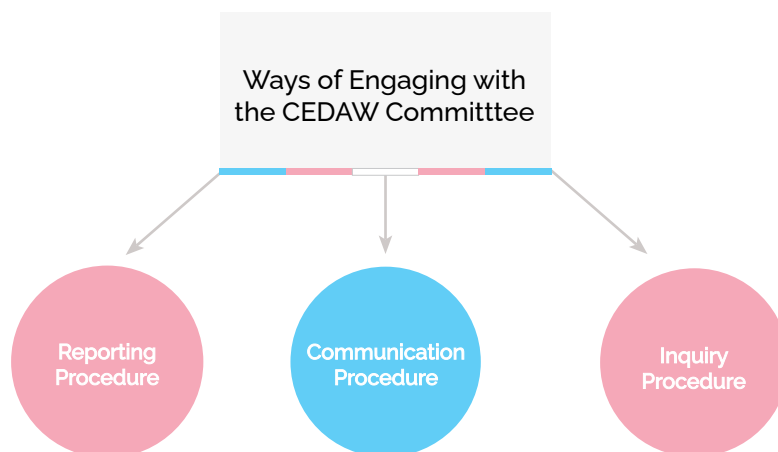


Section 3

How trans women
can use CEDAW to
protect their rights



3.1 Choose your procedure



Provided the relevant State Party has ratified OP-CEDAW and not opted out of the Inquiry Procedure, trans women have a choice between using the Reporting Procedure, the Communications Procedure or the Inquiry Procedure to bring human rights violations by a State Party to the attention of the CEDAW Committee.

Relevant considerations to inform a trans woman's decision regarding which procedure to use are outlined below, while the Annexure contains a practical checklist for the Communication and Inquiry Procedures.

What outcome do you seek?

The desired outcome may influence the choice of procedure. For example, if individual redress is of paramount concern, such as compensation or access to a safe home, the Communications Procedure will likely be the most suitable approach. However, if structural change is the desired outcome, such as legal reform or a change in State practice, then the Inquiry Procedure or Reporting Procedure may be more appropriate.

The Reporting Procedure presents a powerful opportunity for NGOs and activists to inform the Committee of the extent to which a State Party is complying with CEDAW, with the focus being far broader than an individual's testimony. It extends to all non-compliances and comments on progress which arise for consideration as part of a State Parties' periodic review. This option is therefore less appropriate than the Communications or Inquiry Procedures, if the central concern is to amplify an individual's testimony in an international forum or to seek a remedy for the violation of their rights. However, the submission of an Alternative Report has a lower risk of creating an unhelpful precedent which could occur if the Committee makes an unfavourable decision on an individual communication. Concluding Observations are country-specific and limited to the matters raised in the State Party's report. By contrast, the Committee's determination of an individual communication or inquiry or the publication of a General Recommendation sets a precedent for how the Committee will



In cases where both individual redress and structural change are sought, advocates should carefully weigh the ability of these procedures to deliver those outcomes, having regard to the particular facts of the case.

interpret CEDAW going forward in relation to all State Parties. An example of an unhelpful precedent occurred under the International Covenant on Civil and Political Rights ('**ICCPR**') when, in 2002, the UN Human Rights Committee determined in *Joslin v New Zealand*, that the right to marry under Article 23(2) of the ICCPR was limited to different-sex marriage and there is no protection from discrimination under Article 26 for same-sex couples who are denied a marriage licence.

In cases where both individual redress and structural change are sought, advocates should carefully weigh the ability of these procedures to deliver those outcomes, having regard to the particular facts of the case.

What is the nature of the violation, and how many women are affected by it?

The number of women affected and the nature of the alleged violation may influence which procedure is the more appropriate choice. Generally, violations concerning individual women or a small group of women are better suited to the Communications Procedure. While it may technically be possible for the CEDAW Committee to pursue an inquiry into a single, egregious violation or a violation concerning a small group of women, the Committee's limited resources mean it will generally only conduct one inquiry per year, despite multiple requests arguing grave or systemic violations of women's human rights in various countries. Accordingly, the Inquiry Procedure tends to be reserved for the most egregious cases.

In contrast, alleged violations which either concern a large number of women or are structural in nature (e.g. violations resulting from discrimination sanctioned at law, such as legal barriers to gender recognition of trans women), are usually better dealt with through the Inquiry Procedure.

These considerations are less relevant for the Reporting Procedure.

Is it important that your name and identity details are kept secret?

The CEDAW Committee does not accept anonymous complaints under the Communications Procedure. While a complainant may *request* that the CEDAW Committee not publish her name and identifying details in its final decision, she must agree to her identity being disclosed to the State Party.

By contrast, the CEDAW Committee requests that the names of victims and witnesses are anonymised in Alternative Reports submitted under the Reporting Procedure.

In cases where a woman wishes to preserve her anonymity, the Inquiry or Report Procedure would be preferable.

Practical tip

You can examine recent decisions and reports to determine the length of time it is taking to obtain a final decision through the Communications Procedure or for the CEDAW Committee to publish their final inquiry report. For example, as of May 2024, the average time taken for an individual to have their complaint concluded by the CEDAW Committee is 3.5 years,⁸⁹ and under the Inquiry Procedure it is almost six years (five years, 11 months).⁹⁰ These are both longer than the timeframes set out in the OP-CEDAW Guidance Note, which states they will normally take, on average, two to three years and three years or more, respectively.

It should be noted, however, that delays under the Inquiry Procedure are highly variable (e.g. ranging from two to eight years), often due to varying difficulties in obtaining access to necessary information, data and taking into account opportunities for State Parties to submit follow-up reports.

Will you be able to satisfy the threshold requirements?

Whether the Communications Procedure's 'admissibility criteria' or the Inquiry Procedure's 'threshold requirements' can be satisfied influences which procedure is more appropriate. For example, a woman might not be able to satisfy the admissibility criteria of the Communications Procedure but may be able to meet the threshold requirements established by the Inquiry Procedure. For a discussion of the admissibility criteria for a complaint and the threshold requirements for an inquiry, see sections 3.3 and 3.4 below.

There are no relevant threshold requirements for the Reporting Procedure, other than that any testimony included in an Alternative Report must be evidence of a right's violation by a State Party.

If an analysis reveals that certain admissibility criteria or threshold requirements are not met, the necessary steps should be taken to comply with those criteria or requirements. For example, if there is a question as to the reliability of information supporting a request for an Inquiry, additional corroborating information should be obtained or steps taken to ascertain and demonstrate the veracity of that information. If it is determined that it is not possible to satisfy the admissibility criteria or threshold requirements, other means of obtaining redress for violations of women's human rights should be pursued.

Consider how long each procedure will take

The length of the procedure may also influence the choice of procedure. The length of the procedure depends on a range of factors, including:

- the CEDAW Committee's current workload. For example, see the number of [current individual communications](#) pending before the CEDAW Committee;
- whether the complaint or request for an inquiry includes all the relevant information and supporting documentation; and
- whether admissibility criteria or threshold requirements are initially met, and the timeliness of the parties' responses.

Another critical consideration is that the Communications Procedure is only available to persons who have exhausted domestic remedies (discussed further below in section 3.3). To the extent that there are domestic remedies available, the time likely to be expended exhausting these options should be factored into any decision of the appropriate procedure.

Where timing is a significant factor in deciding which mechanism to use, the Reporting Procedure is likely inappropriate unless the relevant State Party's reporting schedule coincides with the time the issue is ready to be raised. Upcoming sessions and the State Parties whose reporting information is to be considered are listed on the UN website [here](#).⁸⁸



Strengths and weaknesses of different CEDAW procedures

Reporting Procedure

Strengths



Address State Party's systemic rights violations



Raise awareness of violations and apply pressure on governments to respond



Influence how the Committee interprets CEDAW in the future

Weaknesses



Timing of complaint is dependent on State Party's reporting schedule



Evidence of individual rights violations may be overshadowed by structural issues



No access to individual redress

Communications Procedure

Strengths



Hold governments accountable for violations of an individual woman's rights



Access to interim measures to prevent irreparable harm



Access to individual and structural redress for violations

Weaknesses



Reliant on individual woman coming forward



Victims can't submit anonymous communication



Requirement to exhaust domestic remedies can be costly and time-consuming

Inquiry Procedure

Strengths



Anyone can request an inquiry and victims can remain anonymous



Committee permitted to visit the territory of the State (with its consent) to carry out inquiry



Addresses systematic human rights violations

Weaknesses



States can opt out of the procedure



States Party may not consent to onsite visit



Inquiry can be established only by the Committee



3.2 Reporting Procedure

As described in section 1.4, the Reporting Procedure involves two parts: (1) influencing Concluding Observations; and (2) having input into General Recommendations.

Part 1: Concluding Observations

There are two opportunities for NGOs and activists to engage with the CEDAW Committee and influence the Concluding Observations on a State Party:

Key steps: (Simplified) Reporting procedure on Concluding Observations

Step 1 The CEDAW Committee invites NGOs to provide information specific to a State Party whose reporting is up for consideration at the Pre-Sessional Working Group of the committee ('PSWG') session. Written submissions should be provided 4 weeks prior to the PSWG session. The Committee also invites NGOs to make oral submissions at the PSWG session.

Step 2 Within a week of the PSWG session, the PSWG prepares and sends the draft List of Issues Prior to Reporting ('LOIPR') to the applicable State Party.

Step 3 The State Party submits its State Party report.

Step 4 The CEDAW Committee invites NGOs to make written submissions 4 weeks prior to the session at which the State Party Report is scheduled to be considered. The Committee also invites NGOs to make oral submissions at the session.

- 1. List of Issues:** prior to the preparation of the List of Issues – NGOs can provide information about a State Party's implementation of and compliance with CEDAW so as to influence what is included in the List of Issues, which ultimately frames the State Party report. The List of Issues is determined by the Pre-Sessional Working Group (**PSWG**) of the CEDAW Committee which meets immediately after a plenary session of the Committee.
- 2. Alternative Report:** following the State Party's submission of its report, which response to the List of Issues, and prior to its consideration by the Committee – NGOs can submit reports which comment on the State Party report and raise issues which are either not mentioned or not accurately represented by the State Party. This is an opportunity for NGOs to provide the Committee with evidence of the State Party's non-compliance with CEDAW around, for example, respecting the rights of trans women.

Prior to each of the PSWG and the plenary session of the CEDAW Committee, NGOs are invited to provide information and submissions on the matters relevant to the List of Issues and State Party report respectively. The information and submissions may be made in writing in advance or orally during the relevant session.

The precise scope of the List of Issues and State Party report depends on whether the State Party has adopted the 'simplified reporting procedure' or the 'standard reporting procedure'. Unless a State Party opted out of the simplified reporting procedure by 20 September 2022, it automatically applies. A significant majority of State Parties operate under the simplified reporting procedure. A list of State Parties and whether they have accepted (or are deemed to have accepted) the simplified reporting procedure is available [here](#).⁹¹

The significant feature of the simplified reporting procedure is

Step 5 After its consideration of all materials, the CEDAW Committee makes concluding observations which outline up to four issues about which the State Party is required to submit follow-up information within 2 years.

Step 6 The CEDAW Committee invites NGOs to make written submissions 4 weeks prior to the session at which the State Party's follow-up report will be assessed.

that, rather than submitting a comprehensive State Party report which addresses each article of CEDAW in order and details the measures it has taken to comply and the progress it has made, the State Party report responds only to the List of Issues (which under the simplified reporting procedure is referred to as the List of Issues Prior to Reporting or '**LOIPR**'). Accordingly, in order for NGOs and activists to influence the subject-matter of State Party reporting under the simplified reporting procedure, **it is critical** that they raise all issues for the Committee's attention before and at the PSWG so that the scope of the LOIPR is sufficiently broad to include the rights of trans women. If the standard reporting procedure applies to a State Party, NGOs and activists will have the opportunity to raise any issues at either the List of Issues or State Party report stages.

The CEDAW Committee publishes a guidance note pertaining to the participation of NGOs in these processes prior to each session: see, [for example](#), the Information from secretariat on 'Participation by Non-Governmental Organisations (NGOs)' published in 2024, in respect of the 88th PSWG. The guidance relates to the form and substance of submissions, in addition to the submission deadlines.

NGOs and activists should consult the session-specific information made available by the CEDAW Committee before submitting any Alternative Reports (including information for lists of issues).

Part 2: General Recommendations

There are two opportunities for NGOs and activists to engage with the CEDAW Committee and influence General Recommendations:

Key steps: Reporting procedure on General Recommendations

Step 1 The CEDAW Committee invites NGOs and activists to make written or oral submissions on the theme of the general discussion in advance of the CEDAW session.

Step 2 During the CEDAW session, the Committee holds a general discussion of the theme.

Step 3 The CEDAW Committee publishes the concept note and draft recommendation and invites NGOs and activists to make written submissions.

Step 4 The CEDAW Committee adopts the general recommendation.

1. **Submissions for general discussion:** If the CEDAW Committee intends to make a General Recommendation, it will publish a **notice** on the UN website stating that the Committee will hold a 'half-day of general discussion' at the upcoming CEDAW session on the theme of the General Recommendation. State Parties and interested stakeholders, including NGOs and activists, are invited to provide written submissions on the theme to the Secretariat, and to participate in the discussion at the session via an oral statement. The Committee uses the general discussion, as well as information obtained during prior State Party reporting, to prepare a draft of the General Recommendation.
2. **Submissions on draft General Recommendation:** After determining the particular subject-matter, the Committee **publishes a draft General Recommendation** and a 'concept note' explaining the substance of the proposed general recommendation and invites human rights institutions (as well as State Parties, academics and experts) to make submissions on the proposal. NGOs and activists have a significant opportunity to engage with the Committee at this stage.

The criteria for written submissions and oral statements are included on the UN websites containing the notice and draft General Recommendation, and should be consulted to ensure submissions are accepted by the Committee.



3.3 Communications Procedure

Key steps

Step 1	Individual or group submits a complaint (a 'communication')
Step 2	The CEDAW Committee determines the admissibility of the communication
Step 3	(Optional): At the request of individual or group, the CEDAW Committee requests the State Party to take 'interim measures' regarding the alleged violation(s)
Step 4	The CEDAW Committee submits the communication to the State Party
Step 5	The State Party provides explanation or clarification of the alleged violation(s)
Step 6	The CEDAW Committee considers the merits of the communication
Step 7	The CEDAW Committee publishes its Views (decision) on the communication
Step 8	The State Party is required to respond within a period (usually around six months) on the steps it has taken to implement the Committee's recommendations
Step 9	(Optional): The CEDAW Committee requests follow-up responses to its Views from the State Party

The process of making a complaint (also referred to as a 'communication') to the CEDAW Committee involves taking the following steps:⁹²

Step 1: Submit your communication

The first step towards lodging a complaint is to submit a formal communication using the form available on the UN's website [here](#).⁹³

The UN's Guidance Note on submitting a communication to CEDAW provides helpful guidance in drafting a communication and is available [here](#).⁹⁴

Communications may be submitted by the victim or on their behalf, with consent. However, others may submit a communication on behalf of the victim without consent where this is justifiable. For example, where the victim has disappeared, is deceased or in detention and denied access to family members, the victim's legal representatives and/or independent physicians may submit communications.

The communication must:

1. be in writing;
2. not be anonymous; and
3. concern a State Party which has agreed to be bound by CEDAW **and** OP-CEDAW.

Step 2: CEDAW Committee determines admissibility

The admissibility criteria are inflexible and the CEDAW Committee has no discretion in overriding these requirements. The two admissibility criteria are outlined below.

Exhaustion of domestic remedies

The individual must have exhausted all available remedies within the State Party's legal system *before* they can make a complaint to the CEDAW Committee. As explained in the UN's Guidance Note, details of the steps taken by the individual to exhaust these remedies must be explained in the complaint submission form available on the UN's website. This includes:

Practical tip

It is best practice to provide as much detail as possible regarding the steps taken (or if not taken, why they weren't taken). This is because even though it is strictly the State Party that must prove that the individual has *not* exhausted all available domestic remedies (or where an exception is argued, why it doesn't apply),⁹⁵ the Committee will still take into account any information provided by the individual.

1. the date and content of each submission;
2. the authority to which it was submitted;
3. the date and reasons for the authority's decision, including any appeals; and
4. if domestic remedies have not been exhausted, details of why this is the case (see 'exceptions' below).

This is designed to give the State Party an opportunity to remedy any discriminatory practices using all available judicial, administrative and extraordinary domestic remedies which are available in practice.

What these domestic remedies look like in practice will ultimately be a question assessed on a case-by-case, State-by-State basis. However, as a general rule, it is not enough for a State Party to argue that domestic remedies were *technically* available e.g. existed in legislation or 'on the books'; they must *actually* have a reasonable likelihood of being implemented in practice. Importantly, whether all available domestic remedies have been exhausted (and if not, whether any of the exceptions noted below apply) is assessed by the CEDAW Committee *at the time it considers a complaint* i.e. not at the time of its submission.

Exceptions: The individual is *not* required to exhaust all available domestic remedies where those remedies are:

1. 'unreasonably prolonged'; or
2. 'unlikely to bring effective relief'.

Accordingly, if the domestic practice of the State Party indicates that an appeal would be futile, or if the nature of the claim would not be appealable in the State Party's system, the Committee will not require the individual to lodge an appeal in the domestic system.⁹⁶

For further detail on this, see an International Justice Resource Center article [here](#).⁹⁷

Specific inadmissibility criteria

A communication may be inadmissible in certain circumstances:

- a. The same matter has already been examined by the CEDAW Committee (or similar committee for other treaties).
- b. It is incompatible with the provisions of CEDAW.
- c. It is manifestly ill-founded or not sufficiently substantiated.
- d. It is an abuse of the right to submit a communication.
- e. The facts that are the subject of the communication occurred prior to the State Party ratifying CEDAW / OP-CEDAW (unless the facts remained after ratification).



The individual must have exhausted all available remedies within the State Party's legal system *before* they can make a complaint to the CEDAW Committee.

Step 3 (Optional): The Committee requests the State Party take 'interim measures'

At its discretion, the CEDAW Committee may urge the State Party to take 'interim measures' to 'avoid irreparable damage to the victim or victims of the alleged violation'.

This may occur at any time after receiving the communication but before the decision. Importantly, a request by the CEDAW Committee for a State Party to take interim measures will have no bearing on its ultimate decision.

An *example* of an interim measure includes requiring a State Party to ensure the protection and physical integrity of the victim and their family.

Step 4: CEDAW Committee submits the communication to the State Party

Once a communication is deemed admissible, the CEDAW Committee will submit the communication to the State Party. The submission will not be published online to ensure the communication remains confidential. The identity of the individual(s) will also be submitted to the State Party, provided they have given consent to disclose it.

Step 5: State Party explains or clarifies alleged violation(s)

After receiving the communication, the State Party has six months to provide a written explanation or clarification. The State Party may also report on any remedies, if any, that have been granted in relation to the matter the subject of the communication.

Step 6: CEDAW Committee considers all available information

The Committee will consider all information made available to it by all parties to inform its decision. This gives each party the opportunity to respond to any information presented.

Step 7: CEDAW Committee decides and gives recommendations

If the CEDAW Committee finds that the State Party has violated CEDAW, it may make recommendations to the State Party, including (but not limited to) any of the following:

1. Restitution, compensation, rehabilitation, or any other remedies for the victim(s).
2. Steps to end ongoing violations against the victim(s).

Practical tip

On page 43 of its paper, 'Our Rights Are Not Optional: Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol', the International Women's Rights Action Watch Asia Pacific has produced a useful flowchart outlining the communications procedure, available [here](#).

3. Law reform and changes in policies and programs which violate CEDAW.
4. Steps to prevent the further violations.

Step 8: State Party responds with decision and recommendations

After the CEDAW Committee communicates its views and recommendations, the State Party must:

1. take these into 'due consideration'; and
2. within six months, submit to the Committee a written response to these views and recommendations, including any actions taken.

Step 9 (Optional): CEDAW Committee may request follow-up response from State Party

The CEDAW Committee may request the State Party to submit further information about measures it has taken in response to its views and recommendations.



3.4 Inquiry Procedure

Key steps

Step 1	The CEDAW Committee receives reliable information regarding a 'grave or systematic' violation(s) affecting women under the jurisdiction of the State Party
Step 2	The CEDAW Committee invites the State Party to examine the information and to respond
Step 3	The CEDAW Committee deliberates on the 'reliability' of the information
Step 4	The CEDAW Committee initiates an Inquiry, which may involve a visit to the State (if the State Party consents)
Step 5	The CEDAW Committee transmits its findings to the State Party
Step 6	The State Party is requested to submit its observations in response to the CEDAW Committee's findings within a period (usually six months) and, to inform the Committee of the steps it has taken in response to the inquiry, if invited to do so by the Committee
Step 7	(Optional): The State Party is requested to report on measures it has taken in response to the CEDAW Committee's findings

The process of requesting the CEDAW Committee to conduct an inquiry involves taking the following steps:⁹⁸

Step 1: 'Threshold requirements' - the complaint must contain reliable information of 'grave' and / or 'systematic' violation(s)

A request can be made in any format (i.e. it can be oral or written, made by any individual or group regardless of the relationship to the violation(s) or the relevant State Party). The UN website contains guidance about what information should be included in the complaint, the format of the complaint and how it should be submitted: see [here](#).⁹⁹

Information contained in the request must be reliable and demonstrate:

1. 'Grave' abuses

The alleged violation(s) must be severe. For example, impacting the right to life, physical or mental well-being and safety; and/or

2. 'Systematic' abuses

The alleged violations must be prevalent or of a sufficient scale. For example, a deliberate government scheme or policy directing violations.

NB: Even where alleged abuses are not 'grave'/severe, if there is a pattern of such abuse as part of a government scheme or policy, this may be sufficient for the CEDAW Committee to commence an inquiry.

Step 2: CEDAW Committee invites State Party to respond

Upon receiving information of the alleged violation(s), the CEDAW Committee will request a response from the State Party to participate in an evaluation of the information, and to provide its own observations regarding the allegations made.

Practical tip

Practical tip: On page 45 of its paper, 'Our Rights Are Not Optional: Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol', the International Women's Rights Action Watch Asia Pacific has produced a useful flowchart outlining the Inquiry Procedure, available [here](#).

Step 3: CEDAW Committee decides on the 'reliability' of information provided

The CEDAW Committee will then consider the reliability of the information regarding the alleged violation(s) based on the observations of the State Party in addition to any other available information.

Step 4: CEDAW Committee initiates Inquiry

Provided the information received is reliable, the CEDAW Committee *may* designate one or more of its members to conduct an inquiry into the alleged violation, and to report their findings back to the CEDAW Committee. This may also include a visit to the State Party (if consent is provided). The inquiry will be confidential and require ongoing cooperation from the State Party.

Step 5: CEDAW Committee communicates its findings to the State Party and makes recommendations

After the inquiry is completed, the CEDAW Committee will communicate its findings, comments and recommendations to the State Party.

If the CEDAW Committee finds that the State Party has violated CEDAW, it may make recommendations to the State Party, including (but not limited to) any of the following:

1. Developing directives, guidelines or policies to monitor, provide early warning and address grave and/or systematic violations of women's human rights.
2. Outlining steps to stop on-going violations and prevent the repetition of similar violations in the future.
3. Reviewing or amending laws that are inconsistent with the provisions of CEDAW.
4. Enacting new laws if appropriate.

Step 6: State Party submits its observations to the CEDAW Committee's findings

After receiving the inquiry's findings from the CEDAW Committee, the State Party has the opportunity to submit a response to the Committee's views and recommendations, including any action it has taken as a result of those views and recommendations.

Step 7 (Optional): CEDAW Committee may request follow-up response from State Party

The CEDAW Committee may require the State Party to report on measures taken in response to its findings. An additional follow-up response six months later may also be required.



Annexure: Practical considerations checklist for Communications and Inquiry Procedures

Identifying a case

Identifying a human rights violation

- ☐ Have you identified the relevant facts?
- ☐ Have you identified harm to the trans woman?
- ☐ Has there been a violation of one or more articles of CEDAW?
- ☐ Have you confirmed that the State is responsible for the violation?
- ☐ Is there evidence to substantiate the complaint?

Identifying the person whose rights have been violated

- ☐ Does the trans woman wish to obtain redress for the violation of her rights and what type of redress is she seeking?
- ☐ Have you explained the range of available international complaint mechanisms, and the pros and cons of each?
- ☐ Have you identified the potential risks of using international complaint mechanisms? Have you identified options for minimising potential risks?
- ☐ Does the trans woman have clear and realistic expectations of what can be achieved through international complaint mechanisms?
- ☐ Have you confirmed whether the trans woman has adequate support systems in place?

Seeking assistance

- ☐ Has the trans woman sought legal and/or financial assistance?
- ☐ Have you consulted key stakeholders? For example, NGOs or local advocacy groups.
- ☐ Have you sought expert information, if needed?

Choosing a forum

- ☐ Has the government ratified the OP-CEDAW? Are there any relevant reservations?
- ☐ Have similar cases been decided previously by the CEDAW Committee or another treaty committee?
- ☐ Has the trans woman exhausted all remedies available under domestic law?
- ☐ Have the admissibility criteria/threshold requirements been met (e.g. deadlines for submission)?

Choosing a procedure

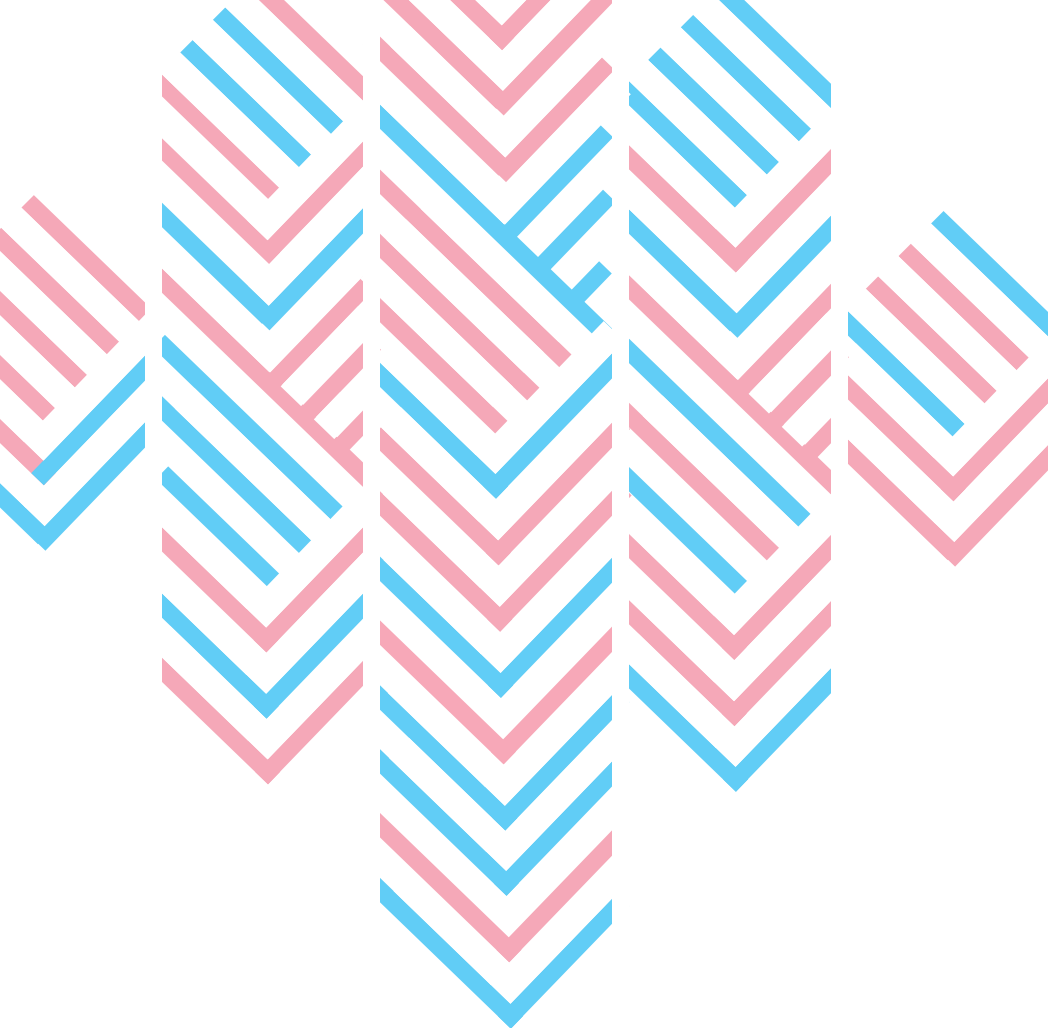
- ☐ How many trans women are affected and what is the nature of the violation?
- ☐ Does the trans woman wish to remain anonymous?
- ☐ Have you weighed the strengths and weaknesses of the Communication and Inquiry Procedures as they relate to the facts of the case?



References

- 1 See e.g., Patricia Schulz, *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol* (Oxford University Press, 2nd ed, 2022), available at <link> ('Schulz et al. (2022)'); Elise Meyer, *Designing Women: The Definition of 'Woman' in CEDAW*, Chicago Journal of International Law (2016): Vol. 16: No. 2, Article 7, available at <link>; Meghan Campbell et al., *CEDAW and Sexual Orientation and Gender Identity*, Transitional Justice Institute (2021), available at <link>.
- 2 Andrew Flores, Ilan Meyer, Lynn Langton and Jody Herman, 'Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017–2018' (2021) 111(4) *American Journal of Public Health* 726.
- 3 Jane Usher et al., 'Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia' (2020) 14 *ANROWS* 191.
- 4 Transgender Europe, *Trans Murder Monitoring* (September 2020), available at <link>.
- 5 An intersex person is born with sex characteristics, including genitals or chromosome patterns, that do not fit medical and social norms for male or female bodies. Like everyone else, intersex people have a gender identity (which may be male, female, non-binary, etc.), as well as a sexual orientation. Intersex variations relate to physical sex characteristics, not to gender identity.
- 6 See, e.g., UN Independent Expert on Sexual Orientation and Gender Identity, available at <link>.
- 7 UN Treaty Body Database, *Ratification Status for CEDAW*, available at <link>.
- 8 UN Treaty Collection, Status of CEDAW, available at <link>.
- 9 [CEDAW/C/SAU/CO/2](#) (April 2008).
- 10 United Nations Treaty Collection, *Status of CEDAW: Declarations and Reservations*, available at <link>.
- 11 [UN Women, A Short History of the Commission on the Status of Women](#) (January 2019).
- 12 [CEDAW/C/GC/28](#) (December 2010) [5].
- 13 See e.g. Schulz et al. (2022) 92–99. Also see E Schläppi and R Locher, 'Art 1: Allgemeine Kommentierung von Art 1' in E Schläppi, S Ulrich, and J Wytenbach (eds), *CEDAW: Kommentar zum Übereinkommen der Vereinten Nationen zur Beseitigung jeder Form von Diskriminierung der Frau* (Stämpfli und Manz 2015) 139–70, 20–21, 161; D Otto, 'Queering Gender [Identity] in International Law' (2015) 33 *Nordic Journal of Human Rights* 299, 307; R Holtmaat and P Post, 'Enhancing LGBTI Rights by Changing the Interpretation of the Convention on the Elimination of All Forms of Discrimination against Women?' (2015) 33, *Nordic Journal of Human Rights* 319, 324; D Rosenblum, 'Unsex CEDAW, or What's Wrong with Women's Rights' (2011) 20 *Columbia Journal of Gender and Law* 98, 118–22; BE Hernández-Truyol, 'Unsex CEDAW? No! Super-Sex It!' (2011) 20 *Columbia Journal of Gender and Law* 195.
- 14 See e.g. CEDAW art 1: '[T]he term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex...'.
15 [CEDAW/C/81/D/134/2018](#) (February 2022) [9.7].
16 [CEDAW/C/CHN/CO/9](#) (May 2023) [56].
17 [CEDAW/C/ZAF/IR/1](#) (May 2021) [121].
18 [CEDAW/C/USR/CO/7](#) (July 2010) [41].
19 [CEDAW/C/75/D/119/2017](#) (February 2020) [7.9].
20 [Concluding Observations on Australia's eighth periodic report, CEDAW/C/AUS/CO/8](#) (July 2018) [50(e)].
- 21 [CEDAW/C/GC/25](#) (August 2004) [12]; [CEDAW/C/GC/28](#) (December 2010) [18]; [CEDAW/C/GC/35](#) (July 2017) [12].
- 22 [CEDAW/C/GC/35](#) (July 2017) [12].
- 23 [CEDAW/C/GC/35](#) (July 2017) [12] citing [CEDAW/C/GC/33](#) (August 2015) and [CEDAW/C/GC/28](#) (December 2010).
- 24 [CEDAW/CAVEN/CO/9](#) (May 2023).
- 25 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), available at <link>, art 31(1). Official records of State Party negotiations leading up to CEDAW may also be consulted as a last resort. Official records of CEDAW and OP-CEDAW negotiations are available at <link> and <link>, respectively.
- 26 De facto equality means equality in reality, meaning equality of rights, opportunities and responsibilities. In contrast to de jure equality which means equality before the law or formal equality.
- 27 [CEDAW/C/GC/25](#) (August 2004) [6]–[8]; [CEDAW/C/51/D/28/2010](#) (April 2012) [8.8].
- 28 See e.g. OP-CEDAW, Art 2.
- 29 [CEDAW/C/GC/28](#) (December 2010) [5], citing [CEDAW/C/GC/19](#) (contained in A/47/38) (1992) [6].
- 30 [CEDAW/C/GC/28](#) (December 2010) [19], citing [CEDAW/C/GC/19](#) (contained in A/47/38) (1992) [7].
- 31 [CEDAW/C/2010/47/GC.28.2](#) (October 2010) [9].
- 32 CEDAW, Article 2(d): 'States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ... (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.'
- 33 See e.g. discussion in [CEDAW/C/GC/35](#) (July 2017) [22].
- 34 See e.g. [CEDAW/C/49/D/20/2008](#) (August 2011) [9.9]–[9.12], where a Bulgarian court was found to have violated Article 2(d) by applying an overly restrictive definition of 'domestic violence' in rejecting an application for a protection order. In that case, the court neglected considerations of a woman's emotional and psychological suffering, instead focusing 'exclusively on the issue of direct and immediate threat to the life or health...and on her physical integrity'. Also [CEDAW/C/66/D/58/2013](#) (February 2017) [13.6]–[13.7], where a Moldovan court was also found to have violated Article 2(d) by appearing to 'privilege' a husband's right to property over a woman's right to physical health and wellbeing'.
- 35 See e.g. [CEDAW/C/81/D/134/2018](#) (February 2022) [9.2], where the State Party, Sri Lanka, was found to have violated Article 2(d) – through its police officers – for subjecting a lesbian woman to 'constant risk of arrest, detention and investigation into her private life'.
- 36 See e.g. discussion in [CEDAW/C/GC/35](#) (July 2017) [24(a)].
- 37 In other cases, whether a private body is acting on behalf of the State is not clear. For example, private schools do not appear to be seen as part of the State, but State Parties are nonetheless required to ensure that private schools 'respect the same standards regarding non-discrimination as do public institutions'. See e.g. Schulz et al. (2022) 127, citing [CEDAW/C/GC/36](#) (November 2017) [39(d)].
- 38 CEDAW, Article 2(e): 'States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and

- without delay a policy of eliminating discrimination against women and, to this end, undertake: ...*(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.*
- 39 See e.g. discussion in [CEDAW/C/GC/35](#) (July 2017) [24(b)].
- 40 See e.g. [CEDAW/C/49/D/17/2008](#) [7.5] (July 2011).
- 41 See e.g. discussion in [CEDAW/C/GC/35](#) (July 2017) [24(b)].
- 42 *Brosnahan v Ronoff* [2011] QCAT 439, available at <[link](#)>.
- 43 [CEDAW/C/GC/32](#) (November 2014) [6].
- 44 [CEDAW/C/GC/39](#) (October 2022) [22].
- 45 [CEDAW/C/GC/36](#) (November 2017) [45].
- 46 UN Treaty Body Database, *Ratification Status for CEDAW*, available at <[link](#)>.
- 47 [CEDAW/C/51/D/28/2010](#) (February 2012) [8.8], affirmed in [CEDAW/C/61/D/45/2012](#) (July 2015) [10.10], [CEDAW/C/68/D/91/2015](#) (November 2017) [7.2], [CEDAW/C/72/D/65/2014](#) (February 2019) [9.4], [CEDAW/C/73/D/99/2016](#) (July 2019) [7.4], [CEDAW/C/75/D/119/2017](#) (February 2020) [7.2].
- 48 [CEDAW/C/FIN/CO/7](#) (March 2014) [29(b)].
- 49 [CEDAW/C/46/D/18/2008](#) (September 2010); [CEDAW/C/51/D/28/2010](#) (February 2012); [CEDAW/C/58/D/47/2012](#) (July 2014); [CEDAW/C/61/D/24/2009](#) (July 2015); [CEDAW/C/61/D/45/2012](#) (July 2015); [CEDAW/C/63/D/46/2012](#) (February 2016); [CEDAW/C/66/D/58/2013](#) (February 2017); [CEDAW/C/72/D/65/2014](#) (February 2019); [CEDAW/C/73/D/87/2015](#) (July 2019); [CEDAW/C/73/D/87/2015](#) (July 2019); [CEDAW/C/75/D/119/2017](#) (February 2020); [CEDAW/C/75/D/138/2018](#) (February 2020); [CEDAW/C/77/D/133/2018](#) (November 2020); [CEDAW/C/80/D/140/2019](#) (October 2021); [CEDAW/C/81/D/134/2018](#) (February 2022); [CEDAW/C/82/D/149/2019](#) (June 2022); [CEDAW/C/82/D/148/2019](#) (July 2022); [CEDAW/C/83/D/153/2020](#) (October 2022); [CEDAW/C/84/D/154/2020](#) (February 2023); [CEDAW/C/87/D/157/2020](#) (March 2024).
- 50 [CEDAW/C/2005/OP.8/MEXICO](#) (January 2005) [56]-[57].
- 51 [CEDAW/C/OP.8/CAN/1](#) (March 2015) [205], [211] and [215].
- 52 [CEDAW/C/OP.8/PHL/1](#) (April 2015) [42]-[43]. Notably, this violation was in relation to Article 5(b) rather than 5(a), and is of less relevance to transgender persons.
- 53 [CEDAW/C/OP.8/KGZ/1](#) (September 2018) [69].
- 54 [CEDAW/C/OP.8/GBR/1](#) (March 2018) [74].
- 55 [CEDAW/C/IR/MLI/1](#) (December 2019) [73]-[74].
- 56 [CEDAW/C/ZAF/IR/1](#) (May 2021) [102].
- 57 [CEDAW/C/GC/38](#) (November 2020) [10].
- 58 [CEDAW/C/GC/38](#) (November 2020) [2].
- 59 [CEDAW/C/GC/35](#) (July 2017) [19].
- 60 *R v Valencia Valencia* [2023] NSWSC 163.
- 61 [CEDAW/C/81/D/134/2018](#) (February 2022) [9.5].
- 62 [CEDAW/C/GC/36](#) (November 2017) [45].
- 63 Schulz et al. (2022) 400.
- 64 [CEDAW/C/FJI/CO/5](#) (March 2018) [38(g)]; [CEDAW/C/MYS/CO/3-5](#) (March 2018) [36(e)].
- 65 [CEDAW/C/MYS/CO/3-5](#) (March 2018) [36(e)].
- 66 [CEDAW/C/AUS/CO/8](#) (July 2018) [42(e)].
- 67 [CEDAW/C/LUX/CO/6-7](#) (March 2018) [40(e)].
- 68 Australian Human Rights Commission, 'Religious Education Institutions and Anti-Discrimination Laws' (March 2023), available at <[link](#)>, citing National Catholic Education Commission, 'Submission to the Attorney-General's Department consultation regarding legislative reforms on religious freedom' (October 2019), available at <[link](#)>; Northern Territory Anti-Discrimination Commission, 'Submission on the Religious Freedom Reforms', available at <[link](#)>.
- 69 Kris Rosentel et al, 'Black Transgender Women and the School-to-Prison Pipeline: Exploring the Relationship Between Anti-trans Experiences in School and Adverse Criminal-Legal System Outcomes' (2020) 18 *Sexuality Research and Social Policy* 481.
- 70 Timothy W Jones et al, *Preventing Harm, Promoting Justice, Responding to LGBT Conversion Therapy in Australia* (2020), available at <[link](#)>.
- 71 [CEDAW/C/CHN/CO/9](#) (May 2023) [79].
- 72 Sex Discrimination Act, s 38(1)-(2).
- 73 [CEDAW/C/2010/47/GC.2](#) (October 2010) [5].
- 74 [CEDAW/C/FIN/CO/7](#) (March 2014) [29(b)]; [CEDAW/C/PAK/CO/5](#) (February 2020) [44(e)].
- 75 See [CEDAW/C/SVK/CO/5-6](#) (November 2015) [37(c)]; [CEDAW/C/MNE/CO/2](#) (July 2017) [46]; [CEDAW/C/AUS/CO/8](#) (July 2018) [50(e)].
- 76 NHS England, *Prescribing of Gender Affirming Hormones (Masculinising or Feminising Hormones) as part of the Children and Young People's Gender Service* (March 2024).
- 77 [CEDAW/C/GC/34](#) (March 2016) [3].
- 78 [CEDAW/C/GC/35](#) (July 2017) [12] citing [CEDAW/C/GC/28](#) (December 2010) and [CEDAW/C/GC/33](#) (August 2015).
- 79 [CEDAW/C/GC/34](#) (March 2016) [5].
- 80 MAP, *Where We Call Home: Transgender People in Rural America* (We Call Home Series No 3, November 2019) 2.
- 81 [CEDAW/C/GC/34](#) (March 2016) [5].
- 82 MAP, *Where We Call Home: Transgender People in Rural America* (We Call Home Series No 3, November 2019) 10.
- 83 MAP, *Where We Call Home: Transgender People in Rural America* (We Call Home Series No 3, November 2019) 22.
- 84 [CEDAW/C/GC/33](#) (August 2015) [8].
- 85 [CEDAW/C/GC/29](#) (October 2013) [18].
- 86 [CEDAW/C/MCO/CO/1-3](#) (November 2017) [46].
- 87 [CEDAW/C/GC/29](#) (October 2013) [24].
- 88 UN Treaty Body Database, *Sessions for CEDAW*, available at <[link](#)>.
- 89 This is based on the average last five years of individual communications, from 'submission date' to 'adoption date' (April 2019 – April 2024). For completeness, this review only captures 'decision on merit' cases, i.e. not cases involving solely procedural and / or admissibility matters.
- 90 Noting there are only eight inquiry reports to date, this is based on the average of all inquiry reports, from 'first received date' to 'distribution date'. See e.g. Schulz at p.848, citing [CEDAW/C/73/D/99/2016](#) [6.4]-[6.5].
- 91 UN Treaty Body Database, *Optional Reporting Procedure*, available at <[link](#)>.
- 92 Adapted from International Women's Rights Action Watch Asia Pacific, *Our Rights Are Not Optional: Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol*, (2nd ed, 2008) 31-33, available at <[link](#)>.
- 93 Office of the High Commissioner for Human Rights, *Form and guidance for submitting an individual communication to treaty bodies*, available at <[link](#)>.
- 94 Office of the High Commissioner for Human Rights, *Form and guidance for submitting an individual communication to treaty bodies*, available at <[link](#)>.
- 95 CEDAW Rules of Procedure, [r 69\(6\)](#). Note, even though rule 69(6) only strictly requires the State Party to prove whether 'all available domestic remedies have been exhausted' (i.e. it is silent as to who must prove whether the exceptions apply), CEDAW jurisprudence suggests that the State Party must also prove that an exception doesn't apply, if it is raised in the individual's complaint. See e.g. [CEDAW/C/83/D/153/2020](#) (October 2022) [6.3]; [CEDAW/C/60/D/48/2013](#) (April 2015) [6.3].
- 96 See e.g. Schulz et al. (2022) 848, citing [CEDAW/C/73/D/99/2016](#) [6.4]-[6.5].
- 97 International Justice Resource Center, *Exhaustion of Domestic Remedies in the United Nations System* (August 2017), available at <[link](#)>.
- 98 Adapted from International Women's Rights Action Watch Asia Pacific, *Our Rights Are Not Optional: Advocating for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol*, (2nd ed, 2008) 31-33, available at <[link](#)>.
- 99 Office of the High Commissioner for Human Rights, *Inquiry procedure: CEDAW*, available at <[link](#)>.



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